



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 29 अप्रैल, 2019 / 9 वैशाख, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 29th October, 2018

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh.—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	482/16	Madan Lal	D.F.O. Nurpur	02-04-2018
2.	206/16	Gulab Deen	E.E. HPPWD, Nurpur	04-04-2018
3.	228/16	Prem Singh	E.E. HPPWD, Nurpur	04-04-2018
4.	269/16	Krishan Singh	E.E. HPPWD, Nurpur	04-04-2018
5.	209/16	Prakash Chand	E.E. HPPWD, Nurpur	04-04-2018
6.	224/16	Desh Raj	E.E. HPPWD, Nurpur	04-04-2018
7.	207/16	Jaram Singh	E.E. HPPWD, Nurpur	04-04-2018
8.	225/16	Om Prakash	E.E. HPPWD, Nurpur	04-04-2018
9.	256/16	Mohinder Pal	E.E. HPPWD, Nurpur	04-04-2018
10.	413/16	Subhash Singh	E.E. HPPWD, Nurpur	04-04-2018
11.	418/16	Sham Lal	E.E. HPPWD, Nurpur	04-04-2018
12.	407/16	Des Raj	E.E. HPPWD, Nurpur	04-04-2018
13.	267/16	Budhi Ram	E.E. HPPWD, Nurpur	04-04-2018
14.	410/16	Vijay Kumar	E.E. HPPWD, Nurpur	04-04-2018
15.	208/16	Mohinder Singh	E.E. HPPWD, Nurpur	04-04-2018
16.	329/15	Sanjeev Kumar	M/s Pal Roller Flour Mill	04-04-2018
17.	119/16	Pipan Dei	E.E. HPPWD, Killar	21-04-2018
18.	594/16	Shounki Devi	E.E. HPPWD, Killar	21-04-2018
19.	310/15	Kamal Kishore	D.F.O. Joginder Nagar	24-04-2018
20.	11/15	Raj Kumar	Dir. Institute of Biotechnology	24-04-2018
21.	10/15	Rajeev Kumar	Dir. Institute of Biotechnology	24-04-2018
22.	12/15	Anil Kumar	Dir. Institute of Biotechnology	24-04-2018
23.	13/15	Manjeet Kumar	Dir. Institute of Biotechnology	24-04-2018

24.	07/15	Suresh Kumar	Dir. Institute of Biotechnology	24-04-2018
25.	16/15	Sanjay Mohammad	Dir. Institute of Biotechnology	24-04-2018
26.	09/15	Joginder Singh	Dir. Institute of Biotechnology	24-04-2018
27.	62/15	Dev Raj	Dir. Institute of Biotechnology	24-04-2018
28.	08/15	Madan Lal	Dir. Institute of Biotechnology	24-04-2018
29.	06/15	Vipan Kumar	Dir. Institute of Biotechnology	24-04-2018
30.	17/15	Joginder Singh	Dir. Institute of Biotechnology	24-04-2018
31.	14/15	Rajesh Kumar	Dir. Institute of Biotechnology	24-04-2018
32.	44/15	Subhash Chand	Dir. Institute of Biotechnology	24-04-2018
33.	15/15	Rajeev Kumar	Dir. Institute of Biotechnology	24-04-2018
34.	509/16	Kamal Singh	M/s Universal Electric Energy	28-04-2018
35.	495/16	Harjinder Singh	M/s Universal Electric Energy	28-04-2018
36.	496/16	Sant Ram	M/s Universal Electric Energy	28-04-2018
37.	494/16	Banarasi Dass	M/s Universal Electric Energy	28-04-2018
38.	507/16	Pyar Singh	M/s Universal Electric Energy	28-04-2018
39.	508/16	Narender Kumar	M/s Universal Electric Energy	28-04-2018
40.	492/16	Bhupender Singh	M/s Universal Electric Energy	28-04-2018
41.	490/16	Kuldeep Singh	M/s Universal Electric Energy	28-04-2018
42.	491/16	Gurbhajan Singh	M/s Universal Electric Energy	28-04-2018
43.	493/16	Surender Kumar	M/s Universal Electric Energy	28-04-2018

By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 482/2016
Date of Institution : 22-8-2016
Date of Decision : 02-04-2018

Shri Madan Lal s/o Shri Ramel Singh, r/o Village Bhaloon, P.O. Kharota, Tehsil Jawali, District Kangra, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Nurpur Forest Division, Nurpur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Madan Lal s/o Shri Ramel Singh, r/o Village Bhaloon, P.O. Kharota, Tehsil Jawali, District Kangra, H.P. during April, 2002 by the Divisional Forest Officer, Nurpur Forest Division, Nurpur, District Kangra, H.P. who was worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated 04-11-2013 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 191, 264, 118 and 45 days during years 1999, 2000, 2001 and 2002 respectively and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year, 1999 where he continued to work under the Range Officer Jawali, upto April, 2001 along-with co-workers namely Jugal Kishore and during the aforesaid period the service of petitioner had been engaged and disengaged by the Range Officer, Jawali without any instructions and respondent had given fictional breaks to petitioner who had not completed 240 days for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). It is alleged that the service of petitioner had been terminated unlawfully by Range Officer, Jawali *w.e.f.* April, 2001 without serving any notice, charge sheet nor any inquiry was conducted against the misconduct of petitioner however no retrenchment compensation was paid to the petitioner in lieu of notice period thereof and the respondent had violated the provisions of Section 25-F (a) & (b) of the Act whereas petitioner had not completed 240 days prior to his termination and the same was null and void. Aggrieved with termination order of respondent, petitioner had approached the Hon'ble Administrative Tribunal by filing O.A. (D) No. 264/2001 and on 7-3-2002 the Hon'ble Administrative Tribunal had directed the petitioner to approach the appropriate forum and the same was covered under the Industrial Disputes Act and as such the Hon'ble Administrative Tribunal was no jurisdiction and the same was disposed of on ground of jurisdiction thereafter petitioner had approached the respondent and raised demand notice dated 20-8-2002. It is further alleged that the respondent had not followed the principle of 'Last come

First go' when the service of petitioner had been engaged and disengaged from 1999 onwards and finally terminated on April, 2001 whereas persons junior to petitioner namely Sanjeev Kumar who had appointed in (1999), Sawroop Singh (12/1999), Shiv Kumar (2000), Budhia (1-1-2000), Onkar Singh (1-1-2001) had been retained in service and after termination of service of petitioner respondent had been appointed Fouza Singh who was appointed on 1-6-2008 and no opportunity of re-employment had been given to petitioner however respondent had violated the provisions of Sections 25-G and 25-H of the Act. It is stated that petitioner again filed O.A. No. 370/2002 before the Hon'ble Administrative Tribunal had been decided on 23-8-2004 however Conservator of Forest, Dharamshala had called the petitioner *vide* letter dated 27-1-2005 whereas petitioner had appeared but his case was not considered for reinstatement. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 20-8-2002 but his dispute was not forwarded to the appropriate government. It is alleged that Dy. Labour Commissioner had not examined the petitioner's demand notice properly. It is alleged that one Smt. Renu Vaidya who had been terminated by Assistant Town Planner, Sub Divisional Town Planning Office Chamba in the month of July, 1999 and she had raised her demand notice in the year 2013 and the appropriate govt. had considered delay of 13 years as well as this Tribunal has also considered delay of 13 years and the relief was granted to said Smt. Renu Vaidya. It is alleged that respondent had orally terminated the services of petitioner in the month of April, 2002 which was unjustified, arbitrary and unconstitutional, contrary, unlawful and against the mandatory provisions of the Act and act of respondent was also unfair labour practice under Section 2 (ra) read with Schedule 5th Clause 10 of the Act. It is alleged that the petitioner is still unemployed and not gainfully employed anywhere from the date of his illegal termination. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on April, 1999 who intermittently worked upto April, 2001 under the Range Officer, Jawali. It is denied that petitioner had not allowed to complete 240 days in a calendar year. It is further stated that petitioner had left the work of his own sweet will and not completed 240 days in any calendar year and as such there was no violation of Section 25-B of the Act. It is contended that petitioner had not completed 240 days as he left the work of his own sweet will and the respondent had not violated the provisions of Section 25-F (a) & (b) of the Act. It is denied that respondent had not followed the principle of last come first go as juniors had been engaged by respondent. It is stated that persons namely Subhash Singh, Budhiya never worked with Jawali Forest Range as well as Sawarna Devi had been engaged on compassionate grounds. It is contended that persons namely Sanjeev Kumar, Maru Ram, Sawroop etc. had been engaged by way of direction of Hon'ble Administrative Tribunal as well as Fouza Singh was engaged in the year 1998 who was senior to the petitioner. Alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule, 4 CPC Ex. PW1/A, copy of letter dated 25-11-2002 Ex. PW1/B, copy of OA No.269/2002 Ex. PW1/C, copy of letter dated 27-1-2005 Ex. PW1/D, copy of seniority list Ex. PW1/E, copy of mandays chart of Jugal Kishore Ex. PW1/F, copy of Award dated 15-6-2013 Ex. PW1/G and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Sharma, the then Divisional Forest Officer,

Nurpur Forest Division Nurpur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, copy of mandays chart of Fauja Singh Ex. RW1/C, copy of orders Ex. RW1/D to Ex. RW1/G and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-1-2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondent during April, 2002 and raised his industrial dispute *vide* demand notice dated 04-11-2013 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition suffers from vice of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief: Petition is partly allowed awarding lump sum compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the month of April, 2001 *qua* his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1999 on muster roll basis as beldar who continued to work till April, 2001 when his services were terminated without paying any retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner had completed more than 240 days in each calendar prior to his termination and that while retrenching the services of petitioner principle of 'Last come First go' was not followed as Sanjeev Kumar who had appointed in (1999), Sawroop Singh (12/1999), Shiv Kumar (2000), Budhia (1-1-2000), Onkar Singh (1-1-2001) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 191 days in the year 1999, 264 days in 2000 and 45 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2001, petitioner has factually worked for 45 days in 2001 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days immediately prior to his retrenchment as stated above. Be it noticed that Fouza Singh and Swarna had been appointed in 2003 and 2008 respectively. It is pertinent to mention to state here that when persons mentioned in para No. 4 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had not issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after April, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that persons mentioned in Senioirty list Ex. PW1/E were engaged after termination of petitioner but no opportunity was given to petitioner for re-employment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1999 to 2010 whereas petitioner had been retrenched in April, 2001 and thereafter several persons were engaged in service but petitioner has not given any opportunity for re-employment. Since the persons mentioned in para 5 of claim petition as well as affidavit of petitioner Ex. PW1/A had been appointed by 1999 to 2008 provisions of Section 25-G of the Act could not be stated to have been violated. It is pertinent to mention to state here that when persons mentioned in Para No. 5 of the claim petition were engaged and petitioner was not given offer for re-employment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act.

15. Ld. Counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after April, 2001 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner never

worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice *i.e.* 4-11-2013 after about 9 years and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminated from service. As such, it is held that after his termination he was not in government job and cross-examination of PW1 reveals that he had not been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner who was senior to persons mentioned and thus respondent had clearly violated Section 25-G of Industrial Disputes Act. In view of ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no *iota* of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that he was ignored and new hands were allowed to join is to be accepted. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act.

16. Ld. Authorized Representative/Counsel for petitioner has placed reliance on judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/s BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry Vs. Presiding Officer, Labour Court, Gurdaspur & Ors.**, in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No. 2, Jaipur and Anr.** in which compensation of Rs. 2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, in which various criteria to be looked by the Hon'ble Apex Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs. 5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs. 4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs. 4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by Ld. Counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's case 2013 (136) FLR 893 (SC)** has been followed and applied.

18. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place in the month of April, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondent has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar vs. Joint Director Sericulture Department and another**. Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, Ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the Ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371, National Engg. Industries Ltd. Vs. State of Rajasthan** in judgment of **2016 (supra)**. In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions *qua* consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under

Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment (2016) *supra*. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (*supra*) and that petitioner had rendered total service for **four years** who was non-skilled worker ageing 47 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 618 days in all the four years aforesaid and that demand notice was issued after a period of 9 years by the petitioner and in view peculiar facts and circumstances as stated above, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3 :

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

Relief :

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 206/2016

Date of Institution : 11-04-2016

Date of Decision : 04-04-2018

Shri Gulab Deen s/o Shri Meer Deen, r/o Village Manoharan, P.O. Sadwan, Tehsil Nurpur,
District Kangra, H.P. . *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.
.. *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services Sh. Gulab Deen s/o Sh. Meer Deen r/o Village Manoharan, P.O. Sadwan, Tehsil Nurpur, Distt. Kangra, H.P. from 1-9-1988 by the Executive Engineer, HPPWD, Nurpur Division, Nurpur, Distt. Kangra, H.P., and (ii) the Executive Engineer, HPPWD Jawali Division, Jawali, Distt. Kangra, (H.P.) who had worked as beldar on daily wages basis only for 75.5 days during the year 3/1988 to 8/1988 and raised his Industrial dispute *vide* demand notice dated 24-11-2013 after more than 24 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1986 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October, 1990 in violation of law. It is further alleged

that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25 G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1986 in HPPWD Division Nurpur rather he was disengaged in October, 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between March, 1988 to August, 1988 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked from March, 1988 till August, 1988 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October, 1990 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in August, 1988. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no

violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for re-employment. It has categorically stated that no other junior persons has been retained or re-employed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18, Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 1-9-1988 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September, 1986 to October, 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September, 1986 but was engaged in March, 1988 and continued to work till August, 1988 during this period also, he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 75½ days in the year 1988. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1988. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed

that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1988.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in September, 1986. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1988 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of August, 1988 by respondent rather prior to creation of these two new Sub-Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in August 1988 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No.3:

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not

come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 228/2016

Date of Institution : 16-06-2016

Date of Decision : 04-04-2018

Shri Prem Singh s/o Shri Munshi Lal, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

The Executive Engineer, Nurpur, Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services between Sh. Prem Singh s/o Sh. Munshi Lal r/o & Village Nera, P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H.P. *w.e.f.* 1-10-1988 by the Executive Engineer, HPPWD Nurpur Division, Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 77.5 days during the year 3/1988 to 9/1988 and has raised his Industrial dispute *vide* demand notice dated 24/11/13 after more than 24 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1987 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1989 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October, 1989 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent,

he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3—4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1987 in HPPWD Division Nurpur rather he was disengaged in October, 1989. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between March, 1988 till September, 1988 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked for 20½ days in March 1988, 09 days in April, 1988, 24 days in August, 1988 and 24 days in September, 1988 aggregating to 77 ½ days who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March, 1988. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner

for re-employment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule, 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 22-09-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 1-10-1988 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follow:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September, 1987 to October, 1989 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1989 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September, 1987 but was engaged in March, 1988 and continued to work till September, 1988 and during this period also, he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 20 ½ days in March, 1987, 09 days in April, 24 days in August and 24 days in September, 1988 aggregating to total 77½ days. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1988. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident

from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Narpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Narpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1988.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Narpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in February, 1987. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Narpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Narpur, Suliali Sub Division falling under the Narpur Division got merged in Narpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Narpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of September, 1988 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Narpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or chargesheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in September, 1988 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No.4 :

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon

the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 269/2016

Date of Institution : 04-05-2016

Date of Decision : 04-04-2018

Shri Krishan Singh s/o Shri Thakur Dass, r/o Village Nera, P.O. Suliali, Tehsil Nurpur,
District Kangra, H.P. . *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.
.. *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Krishan Singh s/o Sh. Thakur Dass r/o Village Nera, P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H. P. during the year 12/1987 by (i) the Executive Engineer, HPPWD, Nurpur Division, Nurpur, Distt. Kangra, H.P., and (ii) the Executive Engineer, HPPWD Jawali Division, Jawali Division, Distt. Kangra, (H.P.), who had worked as beldar on daily wages basis during the year 12/1989 and has worked only for 22 days has raised his Industrial dispute *vide* demand notice dated 24-11-2013 after more than 25 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August, 1986 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September, 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September, 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national

highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer in Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August, 1986 in HPPWD Division Nurpur rather he was disengaged in September, 1988. It has been categorically stated that petitioner was engaged as daily wager in Sub-Division HPPWD Suliali falling under Jassur Division where he worked intermittently in December, 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked in December, 1987 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September, 1988 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in December, 1988. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for

respondent to have issued notice calling upon the petitioner for re-employment. It has categorically stated that no other junior persons has been retained or re-employed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18.12.1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during December, 1987 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from August, 1986 to September, 1988 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1988 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from August, 1986 but was engaged in December, 1987 and he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 22½ days in the year 1987. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still

working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in December, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July, 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the year 1988 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in December, 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there

was a delay of 12 years. **In Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 209/2016

Date of Institution : 11-04-2016

Date of Decision : 04-04-2018

Shri Parkash Chand s/o Shri Mangat Ram, r/o Village Raug, P.O. Panghoori, Tehsil Dhar Kalan, District Pathankot, Punjab. . *Petitioner.*

Versus

The Executive Engineer, Nurpur, Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services between Sh. Parkash Chand s/o Sh. Mangat Ram R.O. Village Raug, P.O. Panghoori, Tehsil Dhar Kalan, Distt. Pathankot (Punjab) from 26-3-1989 by the Executive Engineer, HPPWD, Nurpur Division, Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 2 days during the year 1989 and has raised his industrial dispute *vide* demand notice dated nil (received in the office of the Labour Officer Kangra on 26-11-2013) after more than 24 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1988 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till March, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in March, 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against

him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for reengagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18.1.2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1988 in HPPWD Division Nurpur rather he was disengaged in March, 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently in March, 1989 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till March, 1989 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in March, 1989 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March, 1989. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for re-employment. It has categorically

stated that no other junior persons has been retained or re-employed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 26-3-1989 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September, 1988 to March, 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September, 1988 but was engaged in March, 1989 and he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 02 days in March, 1989. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1989. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18.1.2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still

working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1989.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jawali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in December, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1989 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of March, 1989 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in January, 1988 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No.4

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there

was a delay of 12 years. **In Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 224/2016

Date of Institution : 16-06-2016

Date of Decision : 04-04-2018

Shri Desh Raj s/o Shri Gian Chand, r/o Village & Post Office Suliali, Tehsil Nurpur, District Kangra, H.P. .*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services between Sh. Desh Raj s/o Sh. Gian Chand R.O. & V.P.O. Suliali, Tehsil Nurpur Distt. Kangra, H.P. from 1/8/1988 by the Executive Engineer, HPPWD, Nurpur Division, Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 99.5 days during the year 3/1988 to 7/1988 and has raised his industrial dispute *vide* demand notice dated 24/11/2013 after more than 24 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1988 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October, 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by

HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief vide letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1988 in HPPWD Division Nurpur rather he was disengaged in October, 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between March, 1988 till July, 1988 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division vide H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked from March, 1988 till July, 1988 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in July, 1988 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in July, 1988. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for re-employment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand,

repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 1-8-1988 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September, 1988 to October, 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September, 1988 but was

engaged in March, 1988 and during this period also, he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 26 days in March, 1988, 30 days in April, 24 ½ days in May and 19 days in July, 1988 aggregating to total 99½ days. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1988. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. *Ld. Dy. D.A.* for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. *Ld. Dy. D.A.* for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla vide application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1988.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in December, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of July, 1988 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in January, 1988 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government

and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing cum Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 207/2016
Date of Institution : 11-04-2016
Date of Decision : 04-04-2018

Shri Jaram Singh s/o Shri Chuha Ram, r/o Village Raug, P.O. Panghoori, Tehsil Dhar Kalan, District Pathankot, Punjab. .Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Jaram Singh s/o Sh. Chuha Ram R.O. & Village Raug, P.O. Panghoori, Tehsil Dhar Kalan, Distt. Pathankot (Pb) during 7/1989 by (i) the Executive Engineer, HPPWD, Nurpur Division, Distt. Kangra, H.P. (ii) the Executive Engineer HPPWD Jawali, Distt. Kangra (H.P.) who had worked as beldar on daily wages basis during the year 12/1987 to 7/1989 and has raised his industrial dispute *vide* demand notice dated nil (received in the office of the Labour Officer Kangra on 26/11/2013 after more than 23 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of March, 1987 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in March, 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali,

Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief vide letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1990 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in March, 1987 in HPPWD Division Nurpur rather he was disengaged in October, 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between December, 1987 till July, 1989 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked from 1987 to 1989 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October, 1990 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in July, 1989. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of

Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during July, 1989 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief:

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from March, 1987 to October, 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from March, 1987 but was engaged in December, 1987 and he had worked intermittently till July, 1989. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 28 days in the year 1987, 42 days in 1988 and 60 ½ days in 1989 aggregating to total 130½ days.

As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1989. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. *Ld. Dy. D.A.* for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. *Ld. Dy. D.A.* for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in December, 1987.

This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the year 1988 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in July, 1989 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section

33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 225/2016

Date of Institution : 16-04-2016

Date of Decision : 04-04-2018

Shri Om Parkash s/o Shri Fathe Singh, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Om Parkash s/o Sh. Fathe Singh R.O. Village Nera, P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H.P. from 1-1-1988 by (i) the Executive Engineer, HPPWD, Nurpur Division, Nurpur, Distt. Kangra H.P., (ii) the Executive Engineer, HPPWD Jawali Division, Jawali, Distt. Kangra (H.P.) who had worked as beldar on daily wages basis only for 30 days during year 1987 and has raised his industrial dispute *vide* demand notice dated 24-11-2013 after more than 25 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August, 1985 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September, 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions

of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August, 1985 in HPPWD Division Nurpur rather he was disengaged in September, 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between December, 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked till December, 1987 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in December, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in December, 1987. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for re-employment. It has categorically stated that no other junior persons has been retained or re-employed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam,

the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents 1-1-1988 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from August, 1985 to September, 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from August, 1985 but was engaged in December, 1987 and during this period also, he had worked intermittently. The testimony of RW1

corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 30 days in December 1987. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. *Ld. Dy. D.A.* for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. *Ld. Dy. D.A.* for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua*

petitioner revealed that he had been initially engaged in Suliali Sub Division in December, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July, 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of January, 1988 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in January, 1988 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No.3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, *Id. Dy. D.A.* representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No.4 :

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in *Bhatag Ram's case (2007 LHLJ 903)*. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has

categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 256/2016

Date of Institution : 03-05-2016

Date of Decision : 04-04-2018

Shri Mohinder Pal s/o Shri Chuha Ram, r/o Village Raug, P.O. Panghoori, Tehsil Dhar Kalan, District Pathankot, Punjab. . *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.

. *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Mohinder Pal s/o Sh. Chuha Ram r/o Village Raug, P.O. Panghoori, Tehsil Dhar Kalan, District Pathankot Punjab during October, 1989 by (i) the Executive Engineer HPPWD Division Nurpur, Distt. Kangra H.P., (ii) the Executive Engineer HPPWD Jawali Division, Jawali, District Kangra, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after *vide* demand notice dated nil received Labour Office Dharamshala on 26-11-2013 more than 24 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 167 days in year during November, 1988, to October, 1989 respectively and delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of March, 1987 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1990 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in March, 1990 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains

that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief vide letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in March, 1987 in HPPWD Division Nurpur rather he was disengaged in March, 1990. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between November, 1988 till October, 1989 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked from November, 1988 till October, 1989 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in October, 1989. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or re-employed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during October, 1989 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from March, 1987 to October, 1990 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the

year 1990 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from March, 1987 but was engaged in November, 1988 and continued to work till October, 1989 and during this period also, he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 16 days in November, 1988 and 127 days in 1989 aggregating to total 143 days. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1989. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. *Ld. Dy. D.A.* for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. *Ld. Dy. D.A.* for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed

by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1988.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence qua petitioner revealed that he had been initially engaged in Suliali Sub Division in February, 1987. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1988 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of October, 1989 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in October, 1989 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No.3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No.4 :

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**,

it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),

Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 413/2016
Date of Institution : 27-06-2016
Date of Decision : 04-04-2018

Shri Subhash Singh s/o Shri Fateh Singh, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Subhash Singh s/o Shri Fateh Singh, s/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during September, 1987 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P., (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 24-11-2013 after lapse of more than 26 years. If not, keeping in view delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August, 1985 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September, 1987 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September, 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily

wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief vide letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1988 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August, 1985 in HPPWD Division Nurpur and was disengaged in September, 1987. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September, 1987 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during Sept., 1987 is/was illegal and unjustified as alleged? . . .OPP.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .OPR.

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . . OPR.

Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from August, 1985 to September, 1987. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1987 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November, 1983 by HPPWD Banikhet Division. Said Kusum

Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed in her favour on 18-1-2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February, 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November, 1983 and transferred to Suliali Sub Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division at Jwali and Nurpur in the year 1994. In the case in hand evidence *qua* petitioner revealed that he had been engaged in Suliali Sub Division in March, 1987 wherefrom he was allegedly terminated in the same year. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September, 1987 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted *moreso* when there is no iota of evidence *qua* engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in September, 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered

by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 418/2016

Date of Institution : 27-06-2016

Date of Decision : 04-04-2018

Shri Sham Lal s/o Shri Girdhari Lal, r/o V.P.O. Kopra, Tehsil Nurpur, District Kangra, H.P.
..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Sham Lal s/o Shri Girdhari Lal, r/o V.P.O. Kopra, Tehsil Nurpur, District Kangra, H. P. during September, 1988 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P., (ii) the Executive Engineer, Jawali Division H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated nil received in Labour Office Kangra during year, 2014 after lapse of about 26 years. If not, keeping in view delay of about 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of August, 1986 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H. P. where he continuously worked till September, 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September, 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national

highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H. P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1988 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in August, 1986 in HPPWD Division Nurpur and was disengaged in September, 1988. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September, 1988 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, HP State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A and closed evidence.

7. I have heard the Id. counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

- (1) Whether termination of services of the petitioner by the respondents during Sept., 1988 is/was illegal and unjustified as alleged? . . .*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.
- (5) Relief :

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from August, 1986 to September, 1988. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1988 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing

240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the plea so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November, 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed in her favour on 18-1-2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February, 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November, 1983 and transferred to Suliali Sub Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division at Jwali and Nurpur in the year 1994. In the case in hand evidence *qua* petitioner revealed that he had been engaged in Suliali Sub Division in August, 1986 wherefrom he was allegedly terminated in the year 1988. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September, 1987 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted moreso when there is no *iota* of evidence *qua* engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in September, 1988 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be

entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 407/2016

Date of Institution : 27-06-2016

Date of Decision : 04-04-2018

Shri Des Raj s/o Shri Phoolan Ram, r/o V.P.O. Kotpalhari, Tehsil Nurpur, District Kangra,
H.P.Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.
.. .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Des Raj s/o Shri Phoolan Ram, r/o V.P.O. Kotpalhari, Tehsil Nurpur, District Kangra, H.P. during November, 1982 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P., (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 26-11-2013 after lapse of more than 14 years. If not, keeping in view delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of March, 1987 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till September, 1988 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in September, 1988 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1988 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in March, 1987 in HPPWD Division Nurpur and was disengaged in September, 1988. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July,

1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in September, 1988 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 01-09-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during November, 1982 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No
Issue No. 2 : No
Issue No. 3 : Yes
Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from March, 1987 to September, 1988. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1987 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the plea so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November, 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed in her favour on 18-1-2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in February, 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November, 1983 and transferred to Suliali Sub Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division at Jawali and Nurpur in the year 1994. In the case in hand evidence *qua* petitioner revealed that he had been engaged in Suliali Sub Division in March, 1987 wherefrom he was allegedly terminated in the same year. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1999 as per Notification dated 21st July 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had

been working under Suliali Sub Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of September, 1987 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted *moreso* when there is no *iota* of evidence *qua* engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in September, 1987 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. :	267/2016
Date of Institution :	04-05-2016
Date of Decision :	04-04-2018

Shri Budhi Chand s/o Shri Chuhru Ram, r/o Village Nera, P.O. Suliali, Tehsil Nurpur,
District Kangra, H.P. . Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.
. Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.D. Sharma, Adv.
 For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Budhi Chand s/o Shri Chuhru Ram, r/o Village Nera, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during March, 1987 by (i) the Executive Engineer H.P.P.W.D. Division Nurpur, District Kangra, H.P., (ii) the Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 26 years, *vide* his demand notice dated 24-11-2013 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 40 ½ days in year during 1987 to March 1987 respectively and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of April, 1985 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till August, 1987 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in August, 1987 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1987 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had

violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in April, 1985 in HPPWD Division Nurpur rather he was disengaged in 1987. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between February, 1987 till March, 1987 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No.PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked for 21½ days in March 1997 and 19 days aggregating to 40½ days who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in October, 1987 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in March, 1987. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for re-employment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 22-09-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during March, 1987 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches as alleged? . . .*OPR*.

Relief:

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No.1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from April, 1985 to March, 1987 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1987 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from April, 1985 but was engaged in February, 1987 and continued to work till March, 1987 and during this period also, he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex RW1/B which reveals that petitioner had merely worked for 21½ days in February, 1987 and 19 days in March, 1987 aggregating to total 40½ days. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not

completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1987. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla vide application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1987.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in February, 1987. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July, 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division.

Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1987 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of March, 1987 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No.1 is decided in negative holding that termination of service of petitioner by the respondent in March, 1987 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No.3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-**

operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	410/2016
Date of Institution :	27-06-2016
Date of Decision :	04-04-2018

Shri Vijay Kumar s/o Shri Dharam Singh, r/o Village Ghali, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. *. Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Nurpur, Tehsil Nurpur, District Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D. Jawali Division, Jawali, District Kangra, H.P.

. Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. D. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Vijay Kumar s/o Shri Dharam Singh, r/o Village Ghali, P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. during October, 1989 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P. (ii) the Executive Engineer, Jawali Division, H.P.P.W.D. Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 24-11-2013 after lapse of more than 24 years. If not, keeping in view delay of more than 24 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1986, in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1989 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October, 1989 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent, he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No.3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1988 which clearly violates

Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability and petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1986 in HPPWD Division Nurgur and was disengaged in October, 1989. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurgur Division. It has been emphatically denied that petitioner was ever engaged by the respondent and the question of completion of 240 days did not arise. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurgur in 1994. As such, question of termination of service of petitioner in October, 1989 did not arise. Moreover, petitioner has alleged to gainfully employed as an agriculturist. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. It is further stated that petitioner was never engaged by the respondent and violation of any provisions of the Industrial Disputes Act does not arise. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurgur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondents during October, 1989 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : No

Relief: Claim petition is dismissed per operative part of Award

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner had neither proved mandays chart nor produced seniority list in absence of which it would be unsafe to hold that respondent had violated Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. Be it stated here that there is only oral evidence on record adduced by the parties in support of their respective contentions and that there is no documentary evidence led by either parties to claim petition. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. Be it stated that petitioner has specifically alleged that he had completed 240 days having worked from September, 1986 to October, 1989. He has also stated to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari besides maintained that his service had been terminated/disengaged verbally in the year 1989 by respondent despite availability of work and funds. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not at all worked with the respondent. As such, from evidence on record, it cannot be stated that petitioner had worked for 240 days. For the applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days and his testimony was required to be substantiated from evidence on record. As such, when petitioner has not proved to have factually worked with respondent question of completing 240 days did not arise and thus respondent was not required to issue any notice while disengaging him from service.

12. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand petitioner has emphasized enough that juniors were retained whereas petitioner had been disengaged. In his affidavit Ex. PW1/A petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the plea so raised by petitioner, it would be relevant to go through evidence qua period when said Kusum Sharma had been engaged. Ld. Dy. D.A. for respondent has contended that Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in affidavit of RW1. Be it stated that Kusum Sharma had been engaged in November, 1983 by HPPWD Banikhet Division. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* petitioner's application requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed in her favour on 18-1-2000 RW1 further stated that one post of Store Clerk (work charged brought in regular cadre) had been allotted to Circle at HPPWD Nurpur. Said Kusum Sharma was engaged in

February, 2000 as is evident from Ex. RW1/A affidavit of Inder Singh Uttam, Executive Engineer, HPPWD, B&R Division Nurpur and she continued to work uninterruptedly till January, 2009. It is admittedly not the case of the petitioner that said Kusum Sharma had been disengaged at any point of time rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior the petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority and that she had been initially engaged in November, 1983 and transferred to Suliali Sub Division as has been admitted by RW1 in cross-examination.

13. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division at Jwali and Nurpur in the year 1994. In the case in hand evidence *qua* petitioner revealed that he had been engaged in Suliali Sub Division in March, 1987 wherefrom he was allegedly terminated in the same year. This suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1999 as per Notification dated 21st July, 1994 as shown in affidavit Ex. RW1/A on record. RW1 further stated that Jassur Division cease to exist consequent upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division had fallen under the Nurpur Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division on transfer as deposed by RW1 which consequently fell under Nurpur. It is evident from evidence on record that petitioner had been working under Suliali Sub Division but with the bifurcation of Divisions, it cannot be concluded that petitioner was disengaged in the month of October, 1989 by respondent rather prior to creation of these two new Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This plea of respondent although not been accepted but it cannot be also stated that petitioner had been disengaged by respondent by a verbal order as claimed by petitioner. Similarly, no written representation was made to respondent as alleged in claim petition has been brought in evidence. In view of foregoing plea of petitioner that Section 25 G was violated cannot be accepted moreso when there is no iota of evidence *qua* engagement of petitioner by respondent even for a single day and for similar reasons, plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of forgoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in October, 1989 is neither illegal and nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

14. Since the petitioner has failed to prove that he ever worked with the respondent as beldar and thus there existed no relationship of employer and workman and therefore respondent cannot be stated to have violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act and on this score petition is held to be not maintainable. Issue in question is answered in negative in favour of respondent and against petitioner.

Issue No. 4 :

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the

provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

17. As a sequel to my findings on foregoing issues No.1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 208/2016

Date of Institution : 11-04-2016

Date of Decision : 04-04-2018

Shri Mahinder Singh s/o Shri Kushia Ram, r/o VPO Suliali, Tehsil Nurpur, District Kangra,
H.P. . *Petitioner.*

Versus

The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, Tehsil Nurpur, District
Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. D. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Mahinder Singh s/o Sh. Kushia Ram r/o V.P.O. Suliali, Tehsil Nurpur, Distt. Kangra, H.P. *w.e.f.* 20-3-1986 by the Executive Engineer, HPPWD Division Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 62 days and 54 days during the year 1985, 1986 and has raised his industrial dispute *vide* demand notice dated 24-11-2013 after more than 26 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above mentioned and delay of more than 26 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that petitioner had been engaged as beldar on daily wages in the month of September, 1984 in Suliali Sub Division HPPWD falling under HPPWD Division Nurpur, District Kangra, H.P. where he continuously worked till October, 1986 when he was disengaged by respondent illegally despite availability of work and funds. It is alleged that HPPWD Division Nurpur, District Kangra, H.P. was involved in construction of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and various sites adjoining to it but service of petitioner was disengaged orally in October, 1986 in violation of law. It is further alleged that petitioner had been engaged in construction of roads leading to villages, national highway and had worked to the satisfaction of respondent and other superiors and there was no complaint against him. It further transpires from claim petition that after termination of petitioner by the respondent,

he had made several verbal request to respondent by visiting its office as well as office at Sub Division Suliali who was assured of re-engagement in 3-4 months but did not receive any response from the respondent when petitioner had written various letters to department for re-engagement on daily wage basis but was not engaged. It is alleged that a resolution on behalf of retrenched workmen were also sent to Assistant Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla which was pending and not decided till date. The grievance of the petitioner further remains that petitioner and similarly situated workmen who had been engaged on daily wage basis by HPPWD constituted one unit and procedure for retrenchment which involved applicability of principle of 'Last come First go'. It is alleged that in utter disregard to the provisions of Section 25-G of Industrial Disputes Act junior persons had been retained whereas petitioner had been disengaged more specifically one Smt. Kusam Sharma w/o Sh. Roshan Lal, Village & P.O. Suliali, Tehsil Nurpur, District Kangra, H.P. who was retained in pursuance to letter of Engineer-in-Chief *vide* letter No. 3058/61 dated 18-1-2000. It is claimed that said Kusam Sharma had joined HPPWD Division Nurpur in the year 2000 after disengagement of petitioner in 1986 which clearly violates Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). Accordingly, petitioner prays for setting aside the order of verbal termination as petitioner had completed 240 days in preceding one year from date of termination and thus respondent had violated Section 25-F of the Act. It is alleged that respondent had also not followed the procedure envisaged under Section 25-G of the Act after disengaging petitioner junior persons were engaged and at the same time no notice for re-employment/re-engagement was issued calling upon petitioner to join before engaging junior which violates Section 25-G of the Act. Accordingly, petitioner seeks his reinstatement in service by respondent with seniority, back wages and all the other consequential benefits.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits denied that petitioner had been engaged as beldar in September, 1984 in HPPWD Division Nurpur rather he was disengaged in October, 1986. It has been categorically stated that petitioner was engaged as daily wager in Sub Division HPPWD Suliali falling under Jassur Division where he worked intermittently between July, 1985 till March, 1986 and thereafter left the work and did not approach the respondent/department. It is alleged that HPPWD Division Jassur was shifted to Jawali Division *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994 and strength and staff of Jassur Division was shifted to Jawali but area of Suliali Sub Division was shifted to Nurpur Division. It has been emphatically denied that petitioner had completed 240 days rather claimed that petitioner merely worked from July, 1985 till March, 1986 who did not complete 240 days in any calendar year as reflected in mandays chart. It is alleged that since Suliali Sub Division was shifted to HPPWD Division Nurpur in 1994. As such, question of termination of service of petitioner in March, 1986 did not arise. Moreover, petitioner is alleged to be gainfully employed as an agriculturist. Reiterating his stand, it has been contended that petitioner left the work of beldar in July, 1988. However, denied that any resolution was pending before Assistant Registrar, H.P. State Administrative Tribunal for want of knowledge. In so far as Kusam Sharma is concerned, it has been categorically stated that Kusam Sharma was engaged as helper on daily wage basis by HPPWD Division Dalhousie in 1983 who worked intermittently till November, 1998 when said Kusam Sharma made representation to Engineer-in-Chief HPPWD Shimla in December, 1999 stipulating therein that she belonged to Suliali village as such permission be granted to work in HPPWD Division Nurpur and request was considered and allowed and adjusted against the post of daily waged Store Clerk. As such, said Kusam Sharma even after joining HPPWD Division Nurpur from Dalhousie Division continued to work with the respondent who was senior to the petitioner having joined service with the respondent/department in 1983. As such, there can be no violation of Section 25-H of the Industrial Disputes Act and for similar reasons, it was not required for respondent to have issued notice calling upon the petitioner for reemployment. It has categorically stated that no other junior persons has been retained or reemployed by the respondent besides

maintained that only those workmen were regularized who continuously worked and fulfill the requisite criteria for regularization as per government policy however, denied that petitioner was terminated by the respondent. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, tendered/proved his affidavit under order 18 Rule 4 CPC Ex. PW1/A and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Inder Singh Uttam, the then Executive Engineer, B&R Division HPPWD Nurpur, District Kangra, H.P. as RW1 tendered/proved his affidavit Ex. RW1/A, copy of mandays chart of petitioner Ex. RW1/B, copy of Notification dated 21-7-1994 Ex. RW1/C, copy of office order dated 23-7-1994 Ex. RW1/D, copy of letter dated 18-1-2000 Ex. RW1/E, copy of mandays chart of Smt. Kusum Ex. RW1/F and Ex. RW1/G, copy of letter dated 18-12-1999 Ex. RW1/H and closed evidence.

7. I have heard the Id. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 31-08-2017 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 20-3-1986 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Relief : Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A reiterated his stand as maintained in the claim petition. The Petitioner has specifically stated on oath that he had completed 240 days having worked from September, 1984 to October, 1986 besides maintained to have remained engaged in construction site of road Bodh Chakki Dhar Aund Haddal and Suliali to Dev Barari road and that his service had been terminated/disengaged verbally in the year 1986 in violation of law by respondent. The respondent in its reply as well as statement on oath as RW1 has maintained that petitioner had not worked from September, 1984 but was engaged in July, 1985 till March, 1986 and during this period also, he had worked intermittently. The testimony of RW1 corresponds with mandays chart Ex. RW1/B which reveals that petitioner had merely worked for 62 days in 1985 and 54 days in 1986 aggregating to total 116 days. As such, from oral as well as documentary evidence on record, it cannot be stated that petitioner had worked for 240 days. Be it stated that for applicability of Section 25-F of the Act, petitioner was required to prove that he had worked for 240 days continuously in preceding one year before termination and testimony of petitioner is not substantiated from any corresponding evidence to this effect. As such, when petitioner had not completed 240 days, respondent was not required to issue any notice while disengaging him from service which is not the plea of respondent as it has pleaded that petitioner had abandoned the job.

12. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1986. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. Ld. Dy. D.A. for the State has contended that even if the respondent has not been able to prove abandonment of job by respondent as required under law yet petitioner was not absolved from his accountability to prove to have worked for a minimum period of 240 days in preceding 12 months from termination. In view of the foregoing, it is held that respondent has not violated Section 25-F of the Act who was not required issue any notice or pay compensation as contended by petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, it deals with procedure for retrenchment to be adopted by employer. In the case in hand, petitioner has emphasized enough that juniors were retained by respondent whereas petitioner had been disengaged despite availability of funds and work. In his affidavit petitioner has stated that one Kusum Sharma had been engaged who was junior to him and was retained in service. To appreciate the pleas so raised by petitioner, it would be relevant to go through evidence *qua* period when said Kusum Sharma had been engaged. Before proceeding further it may not be erroneous to mention here that petitioner has failed to prove seniority list of workmen of Suliali Sub Division which was to be proved so as to establish violation of Section 25-G of the Act. Ld. Dy. D.A. for respondent has placed reliance upon mandays chart of Kusum Sharma d/o Daulat Ram who was working in Banikhet Sub Division No.1 HPPWD Banikhet as reflected in Ex. RW1/G. This document shows that Kusum Sharma had been engaged in **November, 1983**. Said Kusum Sharma continued to work till November, 1988 at Dalhousie Division when she had made representation to Engineer-in-Chief, HPPWD Shimla *vide* application Ex. RW1/H requesting her transfer from HPPWD Dalhousie to Suliali HPPWD Sub Division which was allowed as letter Ex. RW1/E dated 18-1-2000 revealed that one post of Store Clerk (work charged brought in regular cadre) had been allotted to HPPWD Nurpur Circle. Said Kusum Sharma was engaged in February, 2000 under HPPWD as is evident from Ex. RW1/F who continued to work uninterruptedly till January, 2009. It is admittedly not the

case of the petitioner that said Kusum Sharma had been disengaged rather she is stated to be still working under HPPWD Division Nurpur. If said Kusum Sharma had joined in Suliali HPPWD Division in February, 2000 she cannot be stated to be junior to petitioner as her service had been placed at the disposal of Executive Engineer HPPWD Nurpur in pursuance to her request allowed by competent authority who had been initially engaged in November, 1983 whereas petitioner had been engaged in 1986.

14. Before proceeding further, it would be relevant to go through the evidence concerning creation of Sub Division of Jwali and Nurpur in the year 1994. In the case in hand, evidence *qua* petitioner revealed that he had been initially engaged in Suliali Sub Division in December, 1987. This Suliali Sub Division was under Jassur Division out of which Jawali Sub Division was made in the year 1990 as is evident from Notification dated 21st July 1994 Ex. RW1/C and Ex. RW1/D on record. These documents further show that Jassur Sub Division cease to exist upon creation of Nurpur and Jawali Sub Division meaning thereby that on creation of Jawali Sub Division and Nurpur, Suliali Sub Division falling under the Nurpur Division got merged in Nurpur Sub Division. Said Kusum Sharma is shown to have joined at Suliali Sub Division which consequently fell under Nurpur Sub Division as discussed in foregoing paragraphs. It is evident from evidence on record that petitioner had been working under Suliali Sub Division since 1985 as stated above but with the bifurcation of Divisions as stated above, it cannot be concluded that petitioner was disengaged in the month of March, 1986 by respondent rather prior to creation of these two new Sub Divisions *i.e.* Nurpur and Jawali, petitioner himself was not in job as he had left the job who did not report for duty. This *plea* of respondent has although not been accepted by this court for want of issuance of notice or charge-sheet but it cannot be stated that petitioner had been disengaged by respondent by a verbal order. In view of foregoing plea of petitioner that Section 25-G was violated cannot be accepted and for similar reasons plea of petitioner that respondent had violated Section 25-H of the Act can also not be accepted. Accordingly, petitioner has failed to establish that respondent had violated provisions of Sections 25-F, 25-G and 25-H of the Act. In view of foregoing discussions, issue No. 1 is decided in negative holding that termination of service of petitioner by the respondent in March 1986 is neither illegal nor unjustified and since the petitioner has been lawfully terminated, he would not be entitled for any service benefits. Both these issues are answered in negative in favour of respondent and against the petitioner.

Issue No. 3 :

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

16. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and

applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

18. As a sequel to my findings on foregoing issues No. 1 and 2, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 329/2015

Date of Institution : 29-07-2015

Date of Decision : 04-04-2018

Shri Sanjeev Kumar s/o Shri Balraj Kumar, r/o V.P.O. Jakhera, District Una, H.P.
. Petitioner.

Versus

The Employer, M/s Pal Roller Flour Mills Private Limited, Plot No.12-A, Industrial Area, Mehatpur, District Una, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Kumar Karan, Adv.

For the Respondent : Sh. Anish J.P., Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sanjeev Kumar s/o Shri Balraj Kumar, r/o V.P.O. Jakhera, District Una, H.P. *w.e.f.* 12-05-2014 by Employer, M/s Pal Roller Flour Mills Private Limited, Plot No.12-A, Industrial Area, Mehatpur, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that the petitioner had been engaged as helper/worker in the month of July, 2008 *vide* verbal order of respondent who continued to work in the factory premises till 11-5-2014 when his service had been unlawfully terminated by respondent/management. Averments made in the claim petition revealed that while terminating service of petitioner, no show cause notice or charge-sheet was issued revealing his misconduct for which he was terminated and at the same time, no notice under Section 25-F of the Industrial Disputes Act or pay in lieu thereof as retrenchment compensation had been paid. It is alleged that petitioner had completed more than 240 days in each and every calendar year as well as in last 12 months preceding his termination. It is stated that on his termination petitioner has raised industrial dispute raising a demand notice copy of which was forwarded to Labour Inspector, Una when conciliation proceedings commenced in which management had filed reply to demand notice and at the same time petitioner had filed rejoinder to reply so filed by the management refuting all allegations made by respondent. It is alleged that conciliation proceedings ended in failure as respondent *vide* letter dated 18-7-2014 had totally refused to reinstate petitioner in service.

4. In addition to the above facts, the petitioner had highlighted in his claim petition that one settlement had been arrived at between Shri Sanjay Garg, Director of company and Shri Rakesh Sharma, Secretary BMS on 19-6-2010 preceded by demand notice raised by Mazdoor Sangh on 20-5-2009 and *vide* settlement demand No.1 was resolved *vide* which respondent/management had agreed to provide two uniforms to each worker every year in pursuance to which respondent had provided uniform to workers of factory in the year 2010 after settlement and thereafter from 1-4-2011 uniforms had not been given to workers. The petitioner in his claim petition has highlighted that he was active member of union and in election held on 27-10-2011 he was elected as Vice President of the union intimation of which was sent to respondent/management. It is claimed that activity of petitioner involved demand of uniform, 8% annual increment and due to petitioner being office bearer of Mazdoor Sangh, the respondent did not allow petitioner to resume duty on 12-5-2014 who was illegally terminated. Even while terminating service of petitioner, respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity). While recruiting new workers opportunity of employment was not offered to petitioner which violated Section 25-H of the Act. Claiming that service of petitioner had been terminated with mala fide intention of the respondent/management due to union activities of petitioner and his termination fell within the ambit of unfair labour practice under Section 2(ra) read with Section 25-T and 25-U read with Vth Schedule clause 1(a) 5 (f) and 13 of the Act. It is alleged that after his termination, petitioner has remained unemployed and was not gainfully employed anywhere and as such was entitled for full back wages from the date of his illegal termination. Accordingly, petitioner has prayed for setting aside illegal termination *w.e.f.* 12-5-2014 with direction to respondent to reinstate petitioner in service with seniority, continuity in service at his original place besides costs of litigation.

5. The respondent contested the claim petition filed reply *inter-alia* taken preliminary objections of maintainability, estoppel, suppression of material facts, limitation. On merits admitted that petitioner was employee of respondent as claimed by him in the claim petition but work and conduct was not upto the mark and several time he was found removing property of the company but lenient view was taken towards him from side of management. It is alleged that on 12-6-2010 petitioner was caught red handed removing 10 kg. of wheat flour for which he tendered written apology dated 12-6-2010. It is claimed that service of petitioner had not been terminated rather he had of his own voluntarily resigned from service on 10-5-2014. It is alleged that on 10-5-2014, supervisor of the company had asked petitioner to perform some task which was in the course of his employment and due to negligence of the petitioner fire took place in factory premises and entire wooden material lying got burnt however huge financial loss as it was controlled and did not spread. Realizing his mistake, petitioner had submitted resignation as on 10-5-2012 to the management without any pressure or coercion. Admitted that petitioner had moved an application before Labour Office Una which was replied by respondent. It is claimed that since petitioner had resigned from service, question of allowing the petitioner to join duty did not arise at all moreso when service of petitioner was not at all terminated by respondent. Accordingly, denying cause of action, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-11-2011 Ex. PW1/B, copy of settlement Ex. PW1/C, copy of settlement Mark-A, copy of demand notice Ex. PW1/D, copy of reply to demand notice Ex. PW1/E, copy of rejoinder to reply Ex. PW1/F, copy of zimni orders Ex. PW1/G, Ex. PW1/G1 to Ex. PW1/G3, copy of report dated 30-8-2014 Ex. PW1/H. Shri Devi Prasad examined PW1, tendered/proved his affidavit Ex. PW2/A, copy of letter dated 9-6-2015 Mark-A, copy of letter regarding bonus Mark-B, copy of letter dated 21-7-2006 Mark-C

and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sanjay Garg, Director, M/s. Pal Roller Flour Mills Pvt. Ltd. as RW1, tendered/proved affidavit Ex. RW1/A, copy of bank certificate Ex. RW1/B. Respondent has also examined one Shri Shashi Shekar, Assistant, State Bank of India Mehatpur, Branch Una as RW2, tendered/proved copy of statement of account Ex. RW2/A and Ex. RW2/B. Respondent examined one Shri Sanjeev Kumar working as Supervisor in the Factory of respondent as RW3, tendered/proved his affidavit Ex. RW3/A, resignation letter dated 10-5-2014 Ex. RW3/B and also proved signature in red circle Ex. RW3/C and closed evidence.

8. I have heard the ld. counsel for the parties, gone through records of the case carefully relevant for disposed of this case.

9. From the contentions raised, following issues were framed on 25-10-2016 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 12-5-2014 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is barred by his act and conduct as alleged. If so, its effect? . . .*OPR.*
5. Whether the petitioner has concealed the material facts from Court as alleged. If so, its effect? . . .*OPR.*

Relief:

10. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief: Claim petition is dismissed per operative part of Award.

REASONS FOR FINDINGS

Issues No.1, 2, 4 and 5 :

11. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it would be pertinent to mention here that respondent was required to raise charge-sheet or hold departmental inquiry if petitioner had not resigned *vide* his letter dated 10-5-2014 and compliance of Section 25-F of the Act would have come into picture only when it was case of termination. In the backdrop of foregoing facts the evidence adduced by the parties needs to be scanned to determine if petitioner had been illegally terminated by respondent as claimed by petitioner or he had voluntarily tendered resignation due to which his service came to an end. Admittedly, petitioner has remained employed with respondent as helper/worker from July, 2008 to 10-5-2014. The claim of the petitioner remains that his service has been terminated illegally by respondent due to union activities. On the other hand, the plea of respondent remains that service of petitioner has not been terminated rather petitioner of his own had tendered resignation on 10-5-2014 Ex. RW3/B preceded by an incident in which fire broke out on the same day in the factory premises due to negligence of the petitioner and that petitioner had shown inability to indemnify respondent for the loss caused as a result of which he tendered resignation Ex. RW1/B.

13. Ld. counsel for the petitioner has contended that petitioner was an office bearer of union of respondent company and was involved in enforcement of demands which had been agreed by management of the respondent company *vide* agreement dated 19-6-2010. In support of his contention reliance upon Ex. PW1/B dated 27-11-2011 showing Sanjeev Kumar petitioner had been elected as Vice President. Ex. PW1/C is a compromise dated 19-6-2010 which had been signed by RW1 Shri Sanjay Garg and Shri Rakesh Sharma Secretary of BMS. While referring to this document, it has been contended that although the management had agreed to provide two uniforms to its workers but only one uniform was given and from 1st April, 2010 it was not given. Mark-A is the compromise dated 12-12-2012 which revealed increase in annual salaries of workers and was signed by petitioner as an office bearer of union besides other had also signed. With the aid of this document, ld. counsel for the petitioner has tried to project that being union leader who was negotiating and highlighting demands of the workers, the petitioner had been illegally terminated and he had not resigned but this plea merits rejection in view of overwhelming record suggesting petitioner had in-fact resigned from service who had specifically admitted on oath that resignation letter Ex. RW1/B was written and signed by him besides did not complain to government authority about his signature having been obtained either forcibly or on blank papers and even before Labour Inspector-*cum*-Conciliation Officer, such plea was not at all raised which manifestly belies statement of petitioner on oath before this court *qua* having not written and signed resignation letter Ex. RW3/B voluntarily. As such, under the garb of union activities, petitioner had made futile endeavour to establish that as the office bearer of union he was victimized and that has resorted to unfair labour practice in terminating his service. Since petitioner had resigned from service, there could be no occasion for respondent to have resorted to any unfair labour practice *moreso* when the resignation was not only signed by the petitioner but was also written by him as admitted by him on oath which supports plea of management of respondent company.

14. Stepping into witness box as PW1 Sanjeev Kumar has sworn his affidavit Ex. PW1/A reiterating his stand as maintained in the claim petition. In his affidavit, petitioner has stated that on 10-5-2014 he was assigned job by one Shri Anurag Sharma, Supervisor which involved removal of wooden frames from iron lying in the factory and burn them and petitioner has after taking out 10 wood frames started putting fire which got spread over all wooden frames lying inside in the factory premises were totally destroyed in fire. He has further stated that respondent had called police and was taken to the office where said Shri Anurag Sharma, Supervisor slapped him and obtained resignation forcibly. Be it stated that petitioner could have been charge-sheeted for the misconduct of putting fire inside factory as stated above if he had not resigned from service on 10-5-2012. He has further stated in affidavit that on 12-5-2014 when he came to factory for his duty, he was refused to enter factory premises when he raised demand notice on 16-5-2014 before Labour Inspector and the said demand notice was replied by management. He has further stated that

his signature existed in the zimni orders Ex. PW1/G1 to G3 before Conciliation Officer besides maintained that on submission of failure report reference was made by Labour Commissioner. The affidavit so filed by petitioner also revealed that he was initially appointed, respondent had got three blank papers and some vouchers signed from him and manipulated resignation letter Ex. RW1/B besides prayed that his illegal termination order be set aside and he be given back wages from 12-5-2014. Cross-examination of petitioner clearly reveals that he had written resignation Ex. RW3/B (Mark-X) and he had also identified his signature upon it. Thereafter, stated of his own that his signature had been got signed forcibly on resignation letter Ex. RW3/B and thereafter stated of his own that his signature were taken on blank papers. In both the situations, atleast blank papers which were allegedly got taken at the time of joining duty were not used. Be it noticed that in claim petition petitioner has not alleged even a single word that his signature had been obtained on blank papers. RW3/B. As such, the petitioner himself was not clear about the facts and the manner in which he signed resignation letter Ex. RW1/B. Significantly, resignation letter was counter signed as witness by one Sanjeev Kumar RW3 working with respondent and one Indu Shekhar who had although filed affidavit but was not examined being repetitive in nature. Said Sanjeev Kumar RW3 was examined has admitted his signature Ex. RW3/C on the resignation letter of petitioner. Similarly, PW2 admitted signature on the resignation letter, once the petitioner has admitted on oath that he had written the letter and signed it which showed that he had voluntarily resigned as he was not in a position to pay respondent for loss caused due to fire that broke out in the factory premises on the same day before tendering resignation. Earlier also he was found stealing 10 kg wheat flour and had tendered written apology letter Mark-Y. As such, his version that signature had been obtained on blank papers or vouchers he was asked to forcibly sign was the same resignation letter could not be accepted. PW2 Shri Devi Prasad who was admittedly present with petitioner on the relevant date while waiting to meet M.D. of respondent company. In cross-examination petitioner has admitted that on 10-5-2014 fire broke out in the factory premises but claimed that it was on vacant land and that petitioner was involved in incident of fire in factory premises. The proceedings before Labour Inspector as Ex. PW1/G1 to G3 read with Ex. PW1/H the report under Section 12(4) of the Act in detail revealed the fact of incident of fire in factory premises which took place on 10-5-2014 and same could have caused huge loss or say damage to the factory due to negligence of petitioner. The failure report under Section 12(4) clearly shows that petitioner had apologized from respondent/management and showed his inability to indemnify respondent due to which had given resignation and that service of petitioner had not been terminated by the respondent rather petitioner of his own had resigned *vide* letter Ex. RW1/B. The above stated evidence is in consonance with plea of respondent which established that petitioner had voluntarily resigned on 10-5-2014 and had thus ceased to be employee of respondent.

15. Cross-examination of PW2 support the plea of management to the extent that fire broke out in the factory premises on 10-5-2014 when petitioner was asked to perform certain duty by Shri Anurag Sharma, Supervisor besides petitioner had earlier been involved an incident in when he was caught red handed stealing 10 kg flour from factory. PW2 who worked in the same factory since 1986 has shown his ignorance about taking away of wheat flour by petitioner but petitioner in his cross-examination has admitted his signature over apology letter dated 12-6-2010 Mark-Y but claimed that his signature had been obtained on blank papers. Significantly, when these blank papers or voucher were got signed by respondent from petitioner, he did not approach any government agency including Labour Officer complaining about act of respondent which manifestly show that plea in afterthought. As such, when petitioner himself has admitted his signature on apology letter dated 12-6-2010 Mark-Y which has although duly not proved but it support the plea of respondent management to the extent that petitioner was found stealing 10 kg. wheat flour from factory premises and caught red handed but even management did not take initiate departmental action and he was allowed to go with direction not to repeat such like misconduct but this evidence would certainly show that work and conduct of petitioner was not satisfactory.

16. RW1 Sh. Sanjay Garg, Director respondent company has tendered his affidavit Ex. RW1/A reiterated his stand as maintained in reply. Cross-examination of RW1 revealed that petitioner had handed his resignation Ex. RW1/B dated 10-5-2012 in his office. He has admitted that supervisor had asked petitioner to perform some duty when fire broke out and loss was caused. He has clarified that huge loss was averted as sufficient water was available to handle the fire which broke out due to negligence of petitioner. He has also admitted that petitioner had been caught red handed while stealing property of the respondent company. Nothing in cross-examination has been asked by the Id. Counsel for petitioner which would show that while getting in to service petitioner was asked to sign blank papers or vouchers as contended by petitioner in his statement of oath. Similarly, nothing has been asked about getting signature obtained on resignation letter forcibly. That being so and that nothing material in the cross-examination could be elicited by Id. counsel for the petitioner which would show that factually resignation was not voluntarily made and/or that it was result coercion as contended by the petitioner, this court is left with no option but to hold that resignation Ex. RW1/B of petitioner was voluntarily act as due to his negligence fire broke out in the factory premises due to which huge loss could have occurred. Similarly, incident of theft of 10 kg. wheat flour and apology letter dated 12-6-2010 as reflected Mark-Y clearly shows that petitioner was in habit of removing properties of respondent/management including wheat flour which was prepared in the factory. In so far as testimony of petitioner that his service was terminated verbally on 12-5-2014 as he was not allowed to enter into the factory premises could not be accepted as he himself admitted that he had tendered resignation Ex. RW1/B written and signed by him to the respondent as stated in foregoing paras.

17. Id. Counsel for respondent vehemently contended that petitioner after tendering resignation has also received his dues as on date of resignation and this fact is evident from the testimony of RW2 Shri Shashi Shekhar working as Assistant in State Bank of India Mehatpur Una Branch who has tendered statement of account Ex RW2/B of respondent which showed that a sum of Rs.1303/- had been transferred in account of petitioner on 9th July, 2014. Ex. RW2/A is the statement account of petitioner in which the above said amount had been deposited being dues payable by respondent as on 10-5-2012 of which petitioner had withdrawn a sum of Rs. 900/- on 30-3-2015. Meaning thereby after deposit of amount of Rs.1303/- on 9-7-2014, petitioner had also withdrawn Rs.900/- out of it. This witness in cross-examination although admitted that in account of petitioner there could be amount deposited except salary also but this fact could have been correctly appreciated had the petitioner brought in evidence that in the said account, he had receipts from other source as well but certificate Ex. RW2/B relied upon by the respondent, revealed transfer of Rs. 1303/- and in view of version of RW2 a sum of Rs. 900/- was withdrawn by petitioner thereafter. As such, payment of dues by respondent on date of resignation also stands proved. Accordingly, issues No.1 & 2 are answered in negative however issue No. 5 is answered in affirmative holding that petitioner had suppressed material facts in particular *qua* his previous misconduct out of which one related to theft of 10 kg. wheat flour as shown in his apology letter dated 12-6-2010. That being so, petitioner is held to have suppressed material facts *qua* his act and conduct in working to the satisfaction of the respondent company and was involved in loss caused to the company by causing wood lying burnt and at when assigned with the job on 10-5-2012 by supervisor which could have also caused huge damage to factory of respondent. As such, petitioner is held to have suppressed material facts. Issue No. 5 is decided in affirmative against petitioner and in favour of respondent as petitioner has himself resigned from service he is debarred from filing claim petition by his act and conduct. Issue No. 4 is decided in affirmative in favour of respondent and against the petitioner.

Issue No. 3 :

18. Id. Counsel for respondent has contended with vehemence that claim petition is not maintainable but it has nowhere been alleged in the pleadings in what manner claim petition is not

Relief:

Announced in the open Court today this 4th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT -
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.
Campt at Chamba**

Ref. No. 119/ 2016

Smt. Pipan Dei w/o Sh. Prakash, r/o V. & P.O. Dharwas, Tehsil Pangi, District Chamba,
H.P. . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P.
. Respondent.

21-04-2018 *Present*: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.37 A.M. Be awaited and put up after lunch hours.

Sd/-
(**K. K. SHARMA**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

21-04-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

21-04-2018

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 594/ 2016

Smt. Shounki Devi w/o Sh. Hukam Chand, Village Micham, P.O. Sahali, Tehsil Pangi,
Distt. Chamba, H.P. *. .Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Killar Tehsil Pangi, District Chamba, H.P.
. .Respondent.

21-04-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

21-04-2018 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
21-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 310/15

Sh. Kamal Kishore s/o Late Shri Inder Singh, r/o V.P.O. Dharwar, Tehsil Sarkaghat,
District Mandi, H.P. *.Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, District Mandi, H.P.
.Respondent..

24-04-2018 *Present:* Sh. N. L. Kaundal, A.R. for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. At this stage, Id. Authorised Representative for petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the Id. Authorised Representative petitioner as stated above, the reference No. 310/15 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication at its end.
5. The file, after completion be consigned to the records.

Announced:
24-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 11/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Raj Kumar s/o Shri Ram Saran, r/o Village Sorar, P.O. Jol Sappar, Tehsil Nadaun, District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P.
3. The Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company) . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondents 1&2 : Sh. Karan Pathania, Adv.
For the Respondent No. 3 : Sh. Vikramjeet Sharma, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Raj Kumar s/o Shri Ram Saran, r/o Village Sorar, P.O. Jol Sappar, Tehsil Nadaun, District Hamirpur, H.P. *w.e.f.* 28-02-2007 to 22-04-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (Principal Employer), (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. (Principal Employer) without complying with the provisions of the Industrial Disputes Act, 1947 and thereafter his services were transferred to the contractor company *i.e.* M/s Shimla Cleanways without his knowledge *w.e.f.* 15-07-2013 where he worked till 31-03-2014 and was again terminated *w.e.f.* 01-04-2014 by the Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 24-12-2014, the name of employer no (i) may be read as 'the Dean, College of Horticulture and Foerstry Neri, District Hamirpur, H.P.' instead of 'the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.', which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 on 22-7-2007 for 89 days who thereafter worked intermittently although with fictional breaks upto the year 2013. Averments made in the claim petition revealed that during above said period, respondents No. 1 and 2 given time to time break to petitioner despite work and funds. It is alleged that respondents No. 1 and 2 had entered into a agreement with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. to outsource unskilled labourers from 1-5-2013 to 31-3-2014 for 11 months and thereafter the contract was renewed for another one year. It is alleged that from 15-7-2013 service of petitioner had been adjusted by respondent No. 1 in the rolls of contractor M/s. Shimla Cleanways without knowledge of petitioner to continue work there uninterruptedly till 31-3-2014. Believing to be working under respondent No. 1 for the period aforesaid, it is alleged that Rampal Baniyal under whom petitioner worked as well as respondent No. 3 never disclosed that petitioner had been working under respondent No. 3. It is alleged that respondents No. 1 and 2 had been marking attendance of petitioner besides making payment of monthly salary and thus without knowledge of petitioner, service conditions has been changed by the respondents. It is alleged that while terminating service on 1-4-2014, no notice or retrenchment compensation in *lieu* thereof was paid and thus termination of petitioner is stated to be null and void *ab-initio*. It is claimed that respondents No. 1 and 2 had given fictional breaks under two spells by engaging petitioner initially for 89 days thereafter with a gap of 89 days with the object that petitioner did not complete 240 days for the purpose of continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter called 'the Act' for brevity). Reliance has been placed upon judgment of Hon'ble High Court of Punjab and Haryana High Court reported in 1994 LLR 454 titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. in which Hon'ble High Court has held appointment workmen for 89 days to be illegal. It is further alleged that while terminating service of petitioner (*i.e.* time to time termination and final termination) provisions of Section 25-G of the Act was not adhered to as doctrine of 'Last come First go' was ignored retaining juniors namely Ishwar Dass and Rajeev Kumar whereas service of petitioner had been terminated. The grievance of petitioner further remains that respondents No. 1 and 2 had engaged regular unskilled Class-IV workers on regular pay scale in Neri I & II including petitioner on daily wage basis for 89 days onwards for two spells besides respondents No. 1 and 2 had engaged some workmen without break namely Mahinder Singh, Ishwar Singh, Harnam Singh, Gorkh Singh, Tarsem Chand, and Ravi Dutt. It is claimed that while engaging above-named four workmen, respondent No. 1 had shown favouritism to one set of workers whereas service of other 14 workmen including petitioner were consistently given fictional breaks for 89 days who were allowed to work in two spells whereas service of the remaining workmen had been engaged without any break which constituted unfair labour practice. It is alleged that petitioner alongwith 13 others had filed complaint against their illegal termination before Deputy Commissioner, Hamirpur referring to order dated 20-11-2014 passed in CWP No.4991/2012 in which Hon'ble High Court of H.P. had directed respondents to not give fictional breaks and if their (*i.e.* service of petitioner and 13 others) already stand dispensed with, no fresh hands shall be engaged meaning thereby that after 20-11-2014, no fresh hands were to be engaged without first offering the retrenched workers including petitioner. As such, it is also claimed by petitioner that respondents had violated order of Hon'ble High Court of H.P. dated 20-11-2014. It is further alleged that reference No.154/2012

titled as Mahinder Singh Vs. The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. had been implemented by respondents No. 1 and 2 and said Mahinder Singh was still working with the respondents. It is claimed that Sanjay Mohmmad and others had filed application dated 4-5-2013 through e-samadhan regarding fictional breaks and regularization of service of 14 workmen which has been consequently forwarded to respondent No. 2 for necessary action but till the date of filing of claim information sought for has not been provided to petitioner alongwith 13 others who had since been not regularized. It is claimed that respondents No. 1 and 2 had given time to time break in service of petitioner by giving fictional breaks after 89 days in two spells in a year and finally terminated his service on 1-4-2014 which is stated to be illegal and unjustified and same is liable to be quashed and set aside. Accordingly, petitioner has prayed that illegal fictional breaks period *w.e.f.* 2007 to 2013-14 directing the respondents to condone break breaks period in continuity of service for the petitioner with direction to pay wages for the break period. The petitioner further prays that final termination dated 1-4-2014 be set aside and respondents No. 1 and 2 be directed to reinstate petitioner in service forthwith alongwith back wages, seniority and continuity in service with consequential service benefits and to any other relief petitioner is found entitled to.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional financial liability. It is claimed that respondent university did not have permanent and perennial nature of experimental field work which requires attendance of labourers (during Rabi and Kharif season). It is alleged that seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. are not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No.HMS-218-62/HMM036-62 as is evident from letter No.UHF/IBES/HMS-218-62-2261-67 dated 21-1-2012 which postulates that no seniority to contractual labour shall be given and the service of individual will be terminated after the contract was over as envisaged conditions No. 2 and 8. The respondent No. 3 has asserted that petitioner had accepted the engagement to the contract alongwith terms and conditions of the appointment/engagement letter without any hesitation and did not complete 240 days in any of the calendar years. It is also claimed by the respondents in their reply specifically alleged that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass had been working with the university since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No.827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged through them to carry out the seasonal and *ad hoc* projects work as and when needed and if petitioner wanted to get himself engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including co-workers engaging contractor outsourced labourers by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including class-IV employees. Moreover, three class-IV employees were stated to have been relieved and sent to the State Govt. besides respondents No. 1 and 2 were not in a position to continue the service of labourers and with object that to avoid additional financial liability. No policy of

engaging regular labourer for 89 days for the seasonal work and *ad hoc* project under which the labourers were engaged for stipulated period existed. It is further stated that as and when the work and funds were available with the respondents under the time bound project and the service of labour for field work were required, advertisement were made from time to time besides most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides that petitioner was engaged on contractual basis of specific terms and conditions which were binding on petitioner. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period besides termination of service of petitioner including other co-workers and opting to outsource through outside agency which is stated to be facing liability of surplus staff including class-IV employees. It is claimed that university was not in a position to continue services of labour and to avoid additional liability however university has formed its own policy for engaging labour for 89 days for carrying out the seasonal work and *ad hoc* project work under which the labourers were engaged for stipulated period. It is also asserted that as and when works and funds available under the time bound projects, service of labourers for field work was required for which advertisement was made from time to time but petitioner had never turned up to appear an interview so as to seek job. It is alleged that at present unskilled labourers were being engaged through independent agency *i.e.* M/s. Shimla Cleanways and not by university itself and if petitioner wanted to get himself engaged for field work with respondents he needed approach the said agency. Accordingly, denying all allegations of petitioner as contained in claim petition respondents No. 1 and 2 have sought for dismissal of claim petition.

6. Respondent No. 3 contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, mis-joinder and non-joinder of parties, estoppel, cause of action. On merits admitted that respondent No. 3 was engaged for providing unskilled labourer on outsource basis to respondents No.1 and 2 for which the contract was entered into between the parties which was effective from 1-5-2013 to 31-3-2014 and thereafter the contract in question was renewed for another one year. Admitted that petitioner had worked under the rolls of respondent No. 3 accepting terms and conditions and performed the duties under the contract according to which engagement of particular workers remained in force subject to availability of work besides asserted that the dispute raised against respondent No. 3 did not fall within the ambit of Act as there existed no relationship of employer and employee between the petitioner and respondent No. 3 was not principal employer rather it is respondent No. 1 for whom respondent No. 3 worked as a contractor. Accordingly claim petition is sought to be dismissed.

7. The petitioner filed rejoinder to the joint reply filed by respondents No. 1 and 2, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover petitioner to be unemployed and not gainfully employee anywhere from the date of his alleged illegal termination.

8. The petitioner has filed rejoinder separately to the reply filed by respondent No.3, reiterated his stand as maintained in the claim petition. It is reiterated that service of petitioner had been terminated on verbal order of respondent No.1 *w.e.f.* 1-4-2014 and thereafter new/fresh hands had been engaged by respondent No.1 who were on the rolls of the respondent No. 3 after termination of service of petitioner.

9. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A, copy of letter dated 3-1-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of letter dated 10-12-2012

Ex. PW1/D, copy of letter dated 22-4-2013 Ex. PW1/E, copy of complaint Ex. PW1/F, copy of letter dated 13-2-2013 Ex. PW1/G, copy of letter dated 27-1-2014 Ex. PW1/H, copy of judgment dated 20-11-2014 Ex. PW1/I, copy of Award dated 24-8-2012 passed by this Court Ex. PW1/J, copy of letter dated 18-1-2010 Ex. PW1/K, copy of letter dated 2-8-2010 Ex. PW1/L, copy of letter dated 20-1-2011 Ex. PW1/M, copy of letter dated 18-9-2012 Ex. PW1/N, copy of letter dated 13-3-2013 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents No. 1 and 2 had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence. Respondent No. 3 however did not lead any evidence and closed the same as is evident from statement of Id. Counsel for respondent No. 3 record and placed on the file on 31-10-2017.

10. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list/tentative seniority list of daily paid workers dated 30-4-2010, 11-4-2011, 23-2-2011, 1-10-2014, 17-10-2015, 16-3-2009, 10-6-2011, 7-10-2014, 16-9-2016 respectively Ex. P1 to P9, copy of mandays chart of contractual labourers Ex. P10 and closed evidence. Respondents however did not lead any further evidence so as to repudiate claim of petitioner.

11. I have heard the counsel representing petitioner and Id. Counsel. for respondent, gone through records of the case carefully.

12. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner *w.e.f.* 28-2-207 to 22-4-2013 by the respondent Nos. 1&2 is/was improper and unjustified as alleged? ..*OPP.*
2. Whether the services of petitioner were transferred to the contractor company *i.e.* M/s Shimla Cleanways respondent No. 3 without knowledge of petitioner *w.e.f.* 15-7-2013 where he continued work till 31-3-2014 as alleged. If so, its effect? ..*OPP.*
3. Whether final termination of services of petitioner *w.e.f.* 01-04-2014 is/was improper and unjustified as alleged? ..*OPP.*
4. If issue No. 1 or issue No. 3 or both are proved in affirmative, to what relief the petitioner is entitled from respondents as alleged? ..*OPP.*
5. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR 1 to 3*
6. Whether the respondent University being educational institution is not covered under the jurisdiction of this court as alleged? ..*OPR 1& 2*
7. Whether the claim petition is time barred by limitation as alleged? ..*OPR 1&2*
8. Whether the claim petition is bad for mis-joinder and non-joinder of the necessary parties as alleged? ..*OPR3*

9. Whether the petitioner is estopped to file present claim petition on account of his act and conduct as alleged? . .OPR3
10. Whether the petitioner has no cause of action against the respondent No. 3 as alleged? . .OPR 3
11. Whether respondent No. 3 being contractor worked under contract of award by the respondent No. 1 & 2 for specific purpose as alleged? . .OPR3

Relief:

13. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

Issue No. 8 : No

Issue No. 9 : No

Issue No. 10 : Discussed

Issue No. 11 : Discussed

Relief: Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2, 3 4, 10 and 11 :

14. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

15. Admittedly, petitioner had been engaged by respondents No.1 and 2 in year 2007 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor respondent No. 3 for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013.

Equally admitted case of respondents No. 1 and 2 is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of atleast 15 days was necessary. It is admittedly not case of respondents No. 1 and 2 that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents No. 1 and 2 that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents No. 1 and 2 deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

16. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

17. Ld. counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents No. 1 and 2 being employers have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

18. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2007 who continued to work with respondents till 31-3-2014 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

19. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

20. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire....”

21. It is admittedly not the case of respondents No. 1 and 2 that petitioner could not be deployed or employed or say that respondents No. 1 and 2 had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents No. 1 and 2 had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join

contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents No. 1 and 2. Equally important to mention here is that while filing reply respondents No. 1 and 2 have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time, their names too have not been disclosed establishes that respondents No. 1 and 2 from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2012 to 2014 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents No. 1 and 2 to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents No. 1 and 2 establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

22. In order to prove his case, the petitioner has placed reliance upon Ex. R10 the mandays on fixed wages *w.e.f.* 2007 relating to petitioner which showed that petitioner had worked under project FCR 034-62 etc. from 28-2-2007 for 89 days and thereafter with several intermittent breaks till 31-3-2014 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents No.1 and 2 so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents No.1 and 2.

23. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No.15 in the seniority list. Similarly, Asha Devi figuring at serial No.16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No.15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 5 and had joined on 28-2-2007 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 28-2-2007 till 31-3-2014 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 12 times from 2007 to 2014 in project FCR -034-62 etc. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

24. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial nos.

17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2007. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y. S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 31-3-2014. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

25. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents No.1 and 2 had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor respondent No. 3 engaged to provide unskilled labourers on outsource basis to respondents No. 1 and 2 which tentamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2011 and no prior notice was served upon him in 2014 notifying petitioner to join contractor respondent No. 3 who was to provide labourers to respondents No. 1 and 2 on the basis of some agreement entered into between respondents No. 1 and 2 and contractor respondent No. 3. Ld. counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/I of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents No. 1 and 2 that any notice was served upon petitioner as could also be gathered from cross examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2014, any notice was served upon petitioner by respondents. If any notice as required would have

been issued by respondents No.1 and 2, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner, no compensation was paid by respondents No. 1 and 2. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents No.1 and 2 had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents No. 1 and 2.

26. Ld. Counsel for the respondents No. 1 and 2 had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of 'retrenchment' and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N.S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them**. Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of

duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker...."**

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act.** Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

27. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of N. Sundaramoney's case relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society.** It was observed that the employer is always in a position to dictate the terms of service vis-à-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to

accept all such conditions even unconscionable conditions of service in the contract of employment. In the case in hand before this court, respondents No.1 and 2 had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

28. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression 'retrenchment'.** The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed. Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents No. 1 and 2 so that petitioner did not become permanent and at the same time act of respondents No.1 and 2 in throwing out petitioner from work with contractor respondent No. 3 without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

29. Thus, in the case before this court respondents No. 1 and 2 had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents No. 1 and 2 had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abruptly engaging labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2007 to 2014 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents No. 1 and 2 with the object to avoid financial liability upon respondents No. 1 and 2 which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

30. Ld. counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/J passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H. P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, ld. counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/J. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondents had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/J above-named, Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2014 by filing affidavit to this effect could not be relied as being a young person ageing about 38 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages.

31. In so far as claim of petitioner as against M/s Shimla Cleanways Contractor respondent No. 3 the contractor is concerned, it would be relevant, at the outset to refer to mandays chart as Ex. P10 concerning petitioner in which his name figures at serial No. 18. A bare glance at the above said document would show that petitioner had been engaged initially on 28-2-2007 who continued to work with the respondents No.1 and 2 till 20-8-2012 and thereafter is shown to have been engaged on 15-7-2013 to 31-3-2014 for different number of working days enumerated therein. In the column of note, there is stipulation to the effect that service of labourers *w.e.f.* 1-5-2013 were engaged through outsourcing agencies of manpower through contractor as per outsource policy introduced from 4/2013. It was further stipulated in this note that consolidated wages for the particular month was paid to contractor as per policy. Be it stated that note appended to mandays chart Ex. P10 concerning Manjeet Kumar neither stipulated name of the contractor nor evidence has been led showing that consolidated wages concerning or including petitioner's wages for specific months enumerated in Ex. P10 was paid to contractor whose name has not even been mentioned and as such no inference can be drawn that respondent No. 3 paid wages to petitioner for different months. It can also be noticed from above said details in Ex. P10 *qua* period for which petitioner had worked or say had been shown to be engaged by the university initially for nine spells whereas under contractor for next ten spells. With the aid of this document, respondents No.1 and 2 have made futile endeavour to defeat the claim of petitioner by submitting that petitioner was no more employee of university who was working under contractor respondent No. 3. In reply respondent No. 3 has maintained that it had been engaged for providing labourers on outsource basis to respondent No. 1 on the basis of which petitioner was engaged. There is no documentary evidence on record establishing that petitioner was initially appointed by respondent No. 1 and thereafter his service were placed at the disposal of respondent No. 3 or that he was transferred at any point of time for which he remained engaged. Significantly, respondent No. 3 did not lead any evidence as ld. Counsel for the respondent No. 3 has made statement before this court on 31-10-2017 that no evidence was to be led on behalf of respondent No. 3 and thus, in absence of any

evidence led by respondent No. 3, it cannot be stated that plea set up in the reply stood proved as against the petitioner.

32. RW1 Dr. P.C. Sharma representing respondents No.1 & 2 has not stated even a single word *qua* engagement of respondent No. 3 who employed petitioner as his affidavit Ex. RW1/A merely stipulated that unskilled labourers were being engaged through independent agency *i.e.* M/s Shimla Cleanways and not by the university itself besides stated that if petitioner wanted to get himself engaged for field work he should approach the contractor which showed that the only witness of respondents No. 1 and 2 did not know if petitioner was placed under respondent No. 3. It is nowhere in evidence of respondents No. 1 and 2 that petitioner had been engaged by respondent No. 3 irrespective of plea of respondent No. 3 that petitioner was engaged by him on demand of respondents No. 1 and 2. It is to be seen by this court if petitioner worked under respondent No. 3 and was its employee or was under supervision of university and its field staff while being engaged for carrying out different projects.

33. Reliance has been placed on judgment reported in **2015 LLR 580** titled as **General Manger, Bharat Heavy Electricals Ltd. Ranipet Vs. Canteen Workers of BHEL, rep. by BHEL Canteen Workers Union, Chennai & Ors.** in which the Hon'ble High Court of Madras has held that when it is proved that employment contract with the contractor is sham and nominal, the employees of the contractor will be having their right to be absorbed as regular employees of the principal employer.

34. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble High Court of Bombay reported in **2015 LLR 974** titled as **Goa MRF Employees' Union Vs. ICARUS Food and Farm and Others** where the employees were engaged through contractor working for the principal employer continuously for a long period, would, in reality, be the employees of the principal employer. Ld. Authorized Representative for the petitioner has taken me through oral evidence on record which establish that factually entire control and supervision of petitioner in this case was by the university and its field staff and not of respondent No. 3. Be it stated that petitioner PW1 in cross-examination has denied to have worked under M/s Shimla Cleanways and his officials rather he asserted that officers of university were supervising his work. He has denied that payments of salary etc. was being made by M/s. Shimla Cleanways rather stated that salary was being paid by university. Not only this, even attendance was being marked by the officers of university and field assistants and not by officers of M/s Shimla Cleanways and whatever worked was assigned by field assistants of the university, the same was performed by him. In cross examination petitioner has shown ignorance if contract was entered into between respondents No.1 and 2 and between in respondent No. 3. On the other hand, for providing unskilled labourers on outsource basis, petitioner admitted that he was working with the university before 1-5-2013. He has further stated that no appointment letter was given by M/s Shimla Cleanways. Thus, when entire supervision or control was that of principal employer *i.e.* university and applying the ratio of judgments referred to above, it may not be erroneous to conclude here respondents No.1 and 2 continue to be principal employer of petitioner.

35. In so far as disengagement of petitioner on 01-4-2014 by respondent Nos. 1 and 2 or by respondent No. 3 M/s Shimla Cleanways is concerned, there is no reliable evidence linking petitioner to have been engaged by M/s Shimla Cleanways in the manner projected in this case and as documentary evidence Ex. P10 does not specifically substantiate plea of respondents No.1 and 2 *qua* engagement of respondent No. 3 as neither the name of contractor was mentioned Ex. P10 nor wages in consolidated form being paid to petitioner has been proved as note appended to Ex. P10 mandays chart of petitioner does not stipulate any such fact specifically and no witness has been

examined by respondents No. 1 and 2 to prove this fact. Be it stated that RW1 is totally silent on this aspect. It is nowhere in the evidence of respondents No.1 and 2 that petitioner had knowledge either of being transferred to respondent No. 3 on 15-7-2013 and RW1 the sole respondent contesting on behalf of respondents No. 1 and 2 has specifically stated that petitioner had been transferred to work under contractor but his statement on oath in cross-examination does not clarify specifically in what manner petitioner was transferred or made to work under respondent No. 3 rather shows that petitioner worked as before with the university ever since 2011 and the arrangement of outsourcing was never notified to him as there is no written document establishing that he was made to work with M/s Shimla Cleanways and similarly when on 15-7-2013 petitioner was working with the university, respondent No. 3 did not issue any letter to petitioner to work with him or that he was on the roll of respondent No. 3. Admittedly, petitioner had worked 31st March, 2014 as per mandays chart with university and while cross-examining petitioner as PW1, Id. Counsel for respondent Nos. 1 to 2 did not put a specific question that petitioner was appointed by M/s Shimla Cleanways who has denied that he worked under M/s Shimla Cleanways besides shown ignorance if M/s Shimla Cleanways had been engaged by respondents No.1 and 2 besides stated that field staff of university used to pay wages and even the attendance was being marked by them. Significantly, petitioner admitted that whatever work was assigned by university petitioner performed the same. Even cross examination of petitioner by respondent No. 3 reveal that petitioner had been engaged by university besides supervision was also conducted by field staff of university. He has admitted that M/s Shimla Cleanways did not give any appointment letter when cross-examined by Id. counsel for respondent No. 3. Thus, from evidence on record led by respondents it is not established that petitioner had been transferred in the manner projected by respondent No.1 who has been held to be principal employer of petitioner and the petitioner would be liable to be absorbed on rolls of respondent Nos. 1 and 2 and not on rolls of respondent No. 3 who was merely contractor and even if respondent No. 3 i.e. contractor had been engaged by respondents No. 1 and 2, the engagement manifestly appear to be sham transaction as practically respondents No. 1 and 2 had complete control over working of petitioner as has been held in **2015 LLR 580**. In another judgment titled as **Mannu Khan Vs. Union of India** reported in **1989 (2) SCC 99**, the Hon'ble Apex Court has regularized contract labourers of cleaning catering establishment and pantry cars in Western Railways. It also needs to be pointed out that none of the respondents had obtained licence under Contract Labour (Regulations & Abolition) Act, 1970 as there is no evidence to this effect adduced by respondents and in such like situation, respondents No.1 and 2 who had engaged respondent No. 3 to provide unskilled labourers are held to be principal employers of petitioner. Accordingly, when respondent No. 3 was engaged to provide labourers who was not registered under Contract Labour (Regulations & Abolition) Act, 1970, he cannot be stated to be registered contractor or principal employer as he was primarily working as contractor and engaged labourers for principal employers as stated above. Accordingly, no relief can be granted to petitioner against respondent No. 3 as respondents 1 and 2 are held to be principal employers of petitioner as stated above.

36. In view of foregoing discussions, it is held that the petitioner despite being contractual labourer would be entitled to be regularized as he had been working intermittently when work was not provided to him whereas other juniors shown namely Bhim Dutt, Kamla Devi and Saroj Bala who joined after him had been given sufficient work as reflected in seniority list Ex. P4 and P5 and thus intermittent breaks are also held to be deliberate and during intermittent break present petitioner he shall be deemed to be in continuous service from date of his initial appointment till was illegally terminated without issuance of one month's notice or compensation in lieu thereof. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents No. 1 & 2 in giving time to time break and finally terminating on 1-4-2014 are improper and unjustified. However, issue no.3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 5 :

37. Ld. counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No.5 is answered in negative in favour of petitioner and against the respondents.

Issue No.6 :

38. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand ld. counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of 'industry' envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner.

Issue No. 7 :

39. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Issues No. 8 & 9 :

41. Both these issues were not pressed by Id. Counsel for respondents at the time of arguments which are decided unpressed in favour of petitioner and against respondents.

Relief :

42. As sequel to my findings on foregoing issues, the claim petition is partly allowed against respondents No.1 and 2 who are directed to re-engage the petitioner forthwith. It is further held that petitioner shall be in continuous uninterrupted service with the respondents No.1 and 2 from the date of his initial engagement in the year 2007 and that the breaks given by the respondents No.1 and 2 during this period being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner whose seniority shall be reckoned from his initial date of engagement besides, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. However, claim petition as against M/s Shimla Cleanways (Contractor) respondent No. 3 is hereby dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

43. The reference is answered in the aforesaid terms.

44. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

45. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 10/2015
Date of Institution : 13-01-2015
Date of decision : 24-4-2018

Shri Rajeev Kumar s/o Shri Sarwan Kumar, r/o Village Sohri, P.O. Jolsappar, Tehsil Nadaun, District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P.
3. The Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company) . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. N.L. Kaundal, AR
	Sh. Vijay Kaundal, Adv.
For the Respondents 1 & 2 :	Sh. Karan Pathania, Adv.
For the Respondent No. 3 :	Sh. Vikramjeet Sharma, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Rajeev Kumar s/o Shri Sarwan Kumar, r/o Village Sohri, P.O. Jolsappar, Tehsil Nadaun, District Hamirpur, H.P. during year 2006 to 22-04-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (Principal Employer), (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. (Principal Employer) without complying with the provisions of the Industrial Disputes Act, 1947 and thereafter his services were transferred to the contractor company *i.e.* M/s Shimla Cleanways without his knowledge *w.e.f.* 15-07-2013 where he worked till 8-09-2014 and was again terminated *w.e.f.* 09-09-2014 by the Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 24-12 2014, the name of employer no (i) may be read as 'the Dean, College of Horticulture and Foerstry Neri, District Hamirpur, H.P.' instead of 'the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamipur, H.P.', which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 on 2006 for 89 days who thereafter worked intermittently although with fictional breaks upto the year 2013. Averments made in the claim petition revealed that during above said period, respondents No. 1 and 2 given time to time break to petitioner despite work and funds. It is alleged that respondents No. 1 and 2 had entered into a agreement with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. to outsource unskilled labourers from 1-5-2013 to 31-3-2014 for 11 months and thereafter the contract was renewed for another one year. It is alleged that from 15-7-2013 service of petitioner had been adjusted by respondent No.1 in the rolls of contractor M/s Shimla Cleanways without knowledge of petitioner to continue work there uninterruptedly till 8-9-2014. Believing to be working under respondent No.1 for the period aforesaid, it is alleged that Rampal Baniyal under whom petitioner worked as well as respondent No. 3 never disclosed that petitioner had been working under respondent No. 3. It is alleged that respondents No. 1 and 2 had been marking attendance of petitioner besides making payment of monthly salary and thus without knowledge of petitioner, service conditions has been changed by the respondents. It is alleged that while terminating service on 9-9-2014, no notice or retrenchment compensation in lieu thereof was paid and thus termination of petitioner is stated to be null and void *ab-initio*. It is claimed that respondents No.1 and 2 had given fictional breaks under two spells by engaging petitioner initially for 89 days thereafter with a gap of 89 days with the object that petitioner did not complete 240 days for the purpose of continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter called 'the Act' for brevity). Reliance has been placed upon judgment of Hon'ble High Court of Punjab and Haryana High Court reported in 1994 LLR 454 titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. in which Hon'ble High Court has held appointment workmen for 89 days to be illegal. It is further alleged that while terminating service of petitioner (*i.e.* time to time termination and final termination) provisions of Section 25-G of the Act was not adhered to as doctrine of 'Last come First go' was ignored retaining juniors namely Ishwar Dass and Rajeev Kumar whereas service of petitioner had been terminated. The grievance of petitioner further remains that respondents No. 1 and 2 had engaged regular unskilled Class-IV workers on regular pay scale in Neri I & II including petitioner on daily wage basis for 89 days onwards for two spells besides respondents No.1 and 2 had engaged some workmen without break namely Mahinder Singh, Ishwar Singh, Harnam Singh, Gorkh Singh, Tarsem Chand, and Ravi Dutt. It is claimed that while engaging above-named four workmen, respondent No.1 had shown favouritism to one set of workers whereas service of other 14 workmen including petitioner were consistently given fictional breaks for 89 days who were allowed to work in two spells whereas service of the remaining workmen had been engaged without any break which constituted unfair labour practice. It is alleged that petitioner alongwith 13 others had filed complaint against their illegal termination before Deputy Commissioner, Hamirpur referring to order dated 20-11-2014 passed in CWP No. 4991/2012 in which Hon'ble High Court of H.P. had directed respondents to not give fictional breaks and if their (*i.e.* service of petitioner and 13 others) already stand dispensed with, no fresh hands shall be engaged meaning thereby that after 20-11-2014, no fresh hands were to be engaged without first offering the retrenched workers including petitioner. As such, it is also claimed by petitioner that respondents had violated order of Hon'ble High Court of H.P. dated 20-11-2014. It is further alleged that reference No.154/2012 titled as Mahinder Singh Vs. The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. had been implemented by respondents No. 1 and 2 and said Mahinder Singh was still working with the respondents. It is claimed that Sanjay Mohammad and others had filed application dated 4-5-2013 through e-samadhan regarding fictional breaks and regularization of service of 14 workmen which has been consequently forwarded to respondent No. 2 for necessary action but till the date of filing of claim information sought for has not been provided to petitioner alongwith 13 others who had since been not regularized. It is claimed that respondents No.1 and 2 had given time to time break in service of petitioner by giving fictional breaks after 89 days in two spells in a year and finally terminated his service on 9-9-2014 which is

stated to be illegal and unjustified and same is liable to be quashed and set aside. Accordingly, petitioner has prayed that illegal fictional breaks period *w.e.f.* 2006 to 2013-14 directing the respondents to condone break breaks period in continuity of service for the petitioner with direction to pay wages for the break period. The petitioner further prays that final termination dated 9-9-2014 be set aside and respondents No. 1 and 2 be directed to reinstate petitioner in service forthwith alongwith back wages, seniority and continuity in service with consequential service benefits and to any other relief petitioner is found entitled to.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional financial liability. It is claimed that respondent university did not have permanent and perennial nature of experimental field work which requires attendance of labourers (during Rabi and Kharif season). It is alleged that seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data *etc.* are not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HPL-038-62/HMS-218-62/HMM036-32 as is evident from letter No.UHF/RHRFES/1-7/1551-58 dated 21-1-2012 which postulates that no seniority to contractual labour shall be given and the service of individual will be terminated after the contract was over as envisaged conditions No. 2 and 8. The respondent No. 3 has asserted that petitioner had accepted the engagement to the contract alongwith terms and conditions of the appointment/engagement letter without any hesitation and did not complete 240 days in any of the calendar years. It is also claimed by the respondents in their reply specifically alleged that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass had been working with the university since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged through them to carry out the seasonal and *ad hoc* projects work as and when needed and if petitioner wanted to get himself engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including co workers engaging contractor outsourced labourers by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including class-IV employees. Moreover, three class-IV employees were stated to have been relieved and sent to the State Govt. besides respondents No. 1 and 2 were not in a position to continue the service of labourers and with object that to avoid additional financial liability. No policy of engaging regular labourer for 89 days for the seasonal work and *ad hoc* project under which the labourers were engaged for stipulated period existed. It is further stated that as and when the work and funds were available with the respondents under the time bound project and the service of labour for field work were required, advertisement were made from time to time besides most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides that petitioner was engaged on contractual basis of specific terms and conditions which were binding on petitioner. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period besides termination of service of petitioner including other co-

workers and opting to outsource through outside agency which is stated to be facing liability of surplus staff including class-IV employees. It is claimed that university was not in a position to continue services of labour and to avoid additional liability however university has formed its own policy for engaging labour for 89 days for carrying out the seasonal work and *ad hoc* project work under which the labourers were engaged for stipulated period. It is also asserted that as and when works and funds available under the time bound projects, service of labourers for field work was required for which advertisement was made from time to time but petitioner had never turned up to appear an interview so as to seek job. It is alleged that at present unskilled labourers were being engaged through independent agency *i.e.* M/s. Shimla Cleanways and not by university itself and if petitioner wanted to get himself engaged for field work with respondents he needed approach the said agency. Accordingly, denying all allegations of petitioner as contained in claim petition respondents No. 1 and 2 have sought for dismissal of claim petition.

6. Respondent No. 3 contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, mis-joinder and non-joinder of parties, estoppel, cause of action. On merits admitted that respondent No. 3 was engaged for providing unskilled labourer on outsource basis to respondents No. 1 and 2 for which the contract was entered into between the parties which was effective from 1-5-2013 to 31-3-2014 and thereafter the contract in question was renewed for another one year. Admitted that petitioner had worked under the rolls of respondent No. 3 accepting terms and conditions and performed the duties under the contract according to which engagement of particular workers remained in force subject to availability of work besides asserted that the dispute raised against respondent No. 3 did not fall within the ambit of Act as there existed no relationship of employer and employee between the petitioner and respondent No. 3 was not principal employer rather it is respondent No. 1 for whom respondent No. 3 worked as a contractor. Accordingly claim petition is sought to be dismissed.

7. The petitioner filed rejoinder to the joint reply filed by respondents No. 1 and 2, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover petitioner to be unemployed and not gainfully employee anywhere from the date of his alleged illegal termination.

8. The petitioner has filed rejoinder separately to the reply filed by respondent No. 3, reiterated his stand as maintained in the claim petition. It is reiterated that service of petitioner had been terminated on verbal order of respondent No. 1 *w.e.f.* 9-9-2014 and thereafter new/fresh hands had been engaged by respondent No. 1 who were on the rolls of the respondent No. 3 after termination of service of petitioner.

9. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A, copy of letter dated 3-1-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of letter dated 10-12-2012 Ex. PW1/D, copy of letter dated 22-4-2013 Ex. PW1/E, copy of complaint Ex. PW1/F, copy of letter dated 13-2-2013 Ex. PW1/G, copy of letter dated 27-1-2014 Ex. PW1/H, copy of judgment dated 20-11-2014 Ex. PW1/I, copy of Award dated 24-8-2012 passed by this Court Ex. PW1/J and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents No. 1 and 2 had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence. Respondent No. 3

however did not lead any evidence and closed the same as is evident from statement of Id. Counsel for respondent No. 3 record and placed on the file on 31-10-2017.

10. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list/tentative seniority list of daily paid workers dated 30-4-2010, 11-4-2011, 23-2-2011, 1-10-2014, 17-10-2015, 16-3-2009, 10-6-2011, 7-10-2014, 16-9-2016 respectively Ex. P1 to P9, copy of mandays chart of contractual labourers Ex. P10 and closed evidence. Respondents however did not lead any further evidence so as to repudiate claim of petitioner.

11. I have heard the counsel representing petitioner and Id. Counsel. for respondent, gone through records of the case carefully.

12. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner during the year 2006 to 22-4-2013 by the respondent Nos. 1&2 is/was improper and unjustified as alleged? . . .*OPP.*
2. Whether the services of petitioner were transferred to the contractor company *i.e.* M/s Shimla Cleanways respondent No. 3 without knowledge of petitioner *w.e.f.* 15-7-2013 where he continued work till 8-9-2014 as alleged. If so, its effect? . . .*OPP.*
3. Whether final termination of services of petitioner *w.e.f.* 09-09-2014 is/was improper and unjustified as alleged? . . .*OPP.*
4. If issue No. 1 or issue No. 3 or both are proved in affirmative, to what relief the petitioner is entitled from respondents as alleged? . . .*OPP.*
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR 1 to 3.*
6. Whether the respondent University being educational institution is not covered under the jurisdiction of this court as alleged? . . .*OPR 1&2.*
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR 1&2.*
8. Whether the claim petition is bad for mis-joinder and non-joinder of the necessary parties as alleged? . . .*OPR 3.*
9. Whether the petitioner is estopped to file present claim petition on account of his act and conduct as alleged? . . .*OPR 3.*
10. Whether the petitioner has no cause of action against the respondent No. 3 as alleged? . . .*OPR 3.*
11. Whether respondent No. 3 being contractor worked under contract of award by the respondent No. 1&2 for specific purpose as alleged? . . .*OPR 3.*

Relief:

13. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : Yes

Issue No. 4 : Discussed

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

Issue No. 8 : No

Issue No.9 : No

Issue No. 10 : Discussed

Issue No. 11 : Discussed

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2,3 4, 10 and 11:

14. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

15. Admittedly, petitioner had been engaged by respondents No. 1 and 2 in year 2006 initially for a period of 89 days and thereafter with intermittent breaks several times till 2014 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor respondent No. 3 for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents No.1 and 2 is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of atleast 15 days was necessary. It is admittedly not case of respondents No. 1 and 2 that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents No. 1 and 2 that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(o) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner qua termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents No. 1 and 2 deliberately resorted to time to time

termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

16. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

17. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents No. 1 and 2 being employers have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

18. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2006 who continued to work with respondents till 8-9-2014 when service of petitioner had been terminated finally alongwith 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

19. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

20. In the aforestated judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulour employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire....”

21. It is admittedly not the case of respondents No. 1 and 2 that petitioner could not be deployed or employed or say that respondents No. 1 and 2 had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents No.1 and 2 had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents No. 1 and 2. Equally important to mention here is that while filing reply respondents No. 1 and 2 have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time, their names too have not been disclosed establishes that respondents No. 1 and 2 from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2006 to 2014 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents No. 1 and 2 to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents No.1 and 2 establishing violation of

provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

22. In order to prove his case, the petitioner has placed reliance upon Ex. R10 the mandays on fixed wages *w.e.f.* 2006 relating to petitioner which showed that petitioner had worked under project HPL-56-62 etc. from 17-7-2006 for 89 days and thereafter with several intermittent breaks till 30-9-2014 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents No. 1 and 2 so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents No.1 and 2.

23. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No.16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial no.15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 2 and had joined on 17-7-2006 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 17-7-2006 till 30-9-2014 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 27 times from 2006 to 2014 in project HPL-056-62 etc. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

24. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2007. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim qua deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma,

Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 31-3-2014. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

25. Ld. counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2006 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/I of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P. C. Sharma, Director Dean College of Horticulture respondent No.1 who showed his ignorance if while disengaging petitioner in the year 2014, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents No. 1 and 2.

27. Ld. Counsel for the respondents No. 1 and 2 had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was

excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of 'retrenchment' and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment.** In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub-cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be

rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**"

Para no.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

27. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub Clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-à-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents No.1 and 2 had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

28. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking

benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents No.1 and 2 so that petitioner did not become permanent and at the same time act of respondents No.1 and 2 in throwing out petitioner from work with contractor respondent No.3 without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

29. Thus, in the case before this court respondents No. 1 and 2 had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents No.1 and 2 had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labourer Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2006 to 2014 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents No. 1 and 2 with the object to avoid financial liability upon respondents No. 1 and 2 which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

30. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/J passed in Reference No.154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/J. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondents had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was

allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/J above-named, Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Id. predecessor-in-office in para No.26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2014 by filing affidavit to this effect could not be relied as being a young person ageing about 38 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages.

31. In so far as claim of petitioner as against M/s Shimla Cleanways Contractor respondent No. 3 the contractor is concerned, it would be relevant, at the outset to refer to mandays chart as Ex. P10 concerning petitioner in which his name figures at serial No. 2. A bare glance at the above said document would show that petitioner had been engaged initially on 17-7-2006 who continued to work with the respondents No.1 and 2 till 20-8-2012 and thereafter is shown to have been engaged on 15-7-2013 to 30-9-2014 for different number of working days enumerated therein. In the column of note, there is stipulation to the effect that service of labourers *w.e.f.* 1-5-2013 were engaged through outsourcing agencies of manpower through contractor as per outsource policy introduced from 4/2013. It was further stipulated in this note that consolidated wages for the particular month was paid to contractor as per policy. Be it stated that note appended to mandays chart Ex. P10 concerning Manjeet Kumar neither stipulated name of the contractor nor evidence has been led showing that consolidated wages concerning or including petitioner's wages for specific months enumerated in Ex. P10 was paid to contractor whose name has not even been mentioned and as such no inference can be drawn that respondent No. 3 paid wages to petitioner for different months. It can also be noticed from above said details in Ex. P10 *qua* period for which petitioner had worked or say had been shown to be engaged by the university initially for nine spells whereas under contractor for next ten spells. With the aid of this document, respondents No.1 and 2 have made futile endeavour to defeat the claim of petitioner by submitting that petitioner was no more employee of university who was working under contractor respondent No. 3. In reply respondent No. 3 has maintained that it had been engaged for providing labourers on outsource basis to respondent No. 1 on the basis of which petitioner was engaged. There is no documentary evidence on record establishing that petitioner was initially appointed by respondent No. 1 and thereafter his service were placed at the disposal of respondent No. 3 or that he was transferred at any point of time for which he remained engaged. Significantly, respondent No. 3 did not lead any evidence as Id. Counsel for the respondent No. 3 has made statement before this court on 31-10-2017 that no evidence was to be led on behalf of respondent No.3 and thus, in absence of any evidence led by respondent No. 3, it cannot be stated that plea set up in the reply stood proved as against the petitioner.

32. RW1 Dr. P.C. Sharma representing respondents No. 1 &2 has not stated even a single word *qua* engagement of respondent No. 3 who employed petitioner as his affidavit Ex. RW1/A merely stipulated that unskilled labourers were being engaged through independent agency *i.e.* M/s Shimla Cleanways and not by the university itself besides stated that if petitioner wanted to get himself engaged for field work he should approach the contractor which showed that the only witness of respondents No. 1 and 2 did not know if petitioner was placed under respondent No. 3. It is nowhere in evidence of respondents No. 1 and 2 that petitioner had been engaged by respondent No.3 irrespective of plea of respondent No. 3 that petitioner was engaged by him on demand of

respondents No. 1 and 2. It is to be seen by this court if petitioner worked under respondent No. 3 and was its employee or was under supervision of university and its field staff while being engaged for carrying out different projects.

33. Reliance has been placed on judgment reported in **2015 LLR 580** titled as **General Manger, Bharat Heavy Electricals Ltd. Ranipet Vs. Canteen Workers of BHEL, rep. by BHEL Canteen Workers Union, Chennai & Ors.** in which the Hon'ble High Court of Madras has held that when it is proved that employment contract with the contractor is sham and nominal, the employees of the contractor will be having their right to be absorbed as regular employees of the principal employer.

34. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of Bombay reported in **2015 LLR 974** titled as **Goa MRF Employees' Union Vs. ICARUS Food and Farm and Others** where the employees were engaged through contractor working for the principal employer continuously for a long period, would, in reality, be the employees of the principal employer. Ld. Authorized Representative for the petitioner has taken me through oral evidence on record which establish that factually entire control and supervision of petitioner in this case was by the university and its field staff and not of respondent No. 3. Be it stated that petitioner PW1 in cross-examination has denied to have worked under M/s Shimla Cleanways and his officials rather he asserted that officers of university were supervising his work. He has denied that payments of salary etc. was being made by M/s. Shimla Cleanways rather stated that salary was being paid by university. Not only this, even attendance was being marked by the officers of university and field assistants and not by officers of M/s Shimla Cleanways and whatever worked was assigned by field assistants of the university, the same was performed by him. In cross-examination petitioner has shown ignorance if contract was entered into between respondents No. 1 and 2 and between in respondent No. 3. On the other hand, for providing unskilled labourers on outsource basis, petitioner admitted that he was working with the university before 1-5-2013. He has further stated that no appointment letter was given by M/s Shimla Cleanways. Thus, when entire supervision or control was that of principal employer *i.e.* university and applying the ratio of judgments referred to above, it may not be erroneous to conclude here respondents no.1 and 2 continue to be principal employer of petitioner.

35. In so far as disengagement of petitioner on 09-9-2014 by respondent Nos. 1 and 2 or by respondent No. 3 M/s Shimla Cleanways is concerned, there is no reliable evidence linking petitioner to have been engaged by M/s Shimla Cleanways in the manner projected in this case and as documentary evidence Ex. P10 does not specifically substantiate plea of respondents No. 1 and 2 *qua* engagement of respondent No. 3 as neither the name of contractor was mentioned Ex. P10 nor wages in consolidated form being paid to petitioner has been proved as note appended to Ex. P10 mandays chart of petitioner does not stipulate any such fact specifically and no witness has been examined by respondents No. 1 and 2 to prove this fact. Be it stated that RW1 is totally silent on this aspect. It is nowhere in the evidence of respondents No. 1 and 2 that petitioner had knowledge either of being transferred to respondent No. 3 on 15-7-2013 and RW1 the sole respondent contesting on behalf of respondents No. 1 and 2 has specifically stated that petitioner had been transferred to work under contractor but his statement on oath in cross-examination does not clarify specifically in what manner petitioner was transferred or made to work under respondent No. 3 rather shows that petitioner worked as before with the university ever since 2011 and the arrangement of outsourcing was never notified to him as there is no written document establishing that he was made to work with M/s Shimla Cleanways and similarly when on 15-7-2013 petitioner was working with the university respondent No. 3 did not issue any letter to petitioner to work with him or that he was on the roll of respondent No. 3. Admittedly, petitioner had worked 30th September, 2014 as per mandays chart with university and while crossexamining petitioner as PW1, ld. counsel for respondent Nos. 1 to 2 did not put a specific question that petitioner was

appointed by M/s Shimla Cleanways who has denied that he worked under M/s Shimla Cleanways besides shown ignorance if M/s Shimla Cleanways had been engaged by respondents No.1 and 2 besides stated that field staff of university used to pay wages and even the attendance was being marked by them. Significantly, petitioner admitted that whatever work was assigned by university petitioner performed the same. Even cross-examination of petitioner by respondent No. 3 reveal that petitioner had been engaged by university besides supervision was also conducted by field staff of university. He has admitted that M/s Shimla Cleanways did not give any appointment letter when cross-examined by Id. Counsel for respondent No. 3. Thus, from evidence on record led by respondents it is not established that petitioner had been transferred in the manner projected by respondent No. 1 who has been held to be principal employer of petitioner and the petitioner would be liable to be absorbed on rolls of respondent Nos. 1 and 2 and not on rolls of respondent No. 3 who was merely contractor and even if respondent No. 3 *i.e.* contractor had been engaged by respondents No.1 and 2, the engagement manifestly appear to be sham transaction as practically respondents No.1 and 2 had complete control over working of petitioner as has been held in **2015 LLR 580**. In another judgment titled as **Mannu Khan Vs. Union of India** reported in **1989 (2) SCC 99**, the Hon'ble Apex Court has regularized contract labourers of cleaning catering establishment and pantry cars in Western Railways. It also needs to be pointed out that none of the respondents had obtained licence under Contract Labour (Regulations & Abolition) Act, 1970 as there is no evidence to this effect adduced by respondents and in such like situation, respondents No.1 and 2 who had engaged respondent No. 3 to provide unskilled labourers are held to be principal employers of petitioner. Accordingly, when respondent No. 3 was engaged to provide labourers who was not registered under Contract Labour (Regulations & Abolition) Act, 1970, he cannot be stated to be registered contractor or principal employer as he was primarily working as contractor and engaged labourers for principal employers as stated above. Accordingly, no relief can be granted to petitioner against respondent no.3 as respondents 1 and 2 are held to be principal employers of petitioner as stated above.

36. In view of foregoing discussions, it is held that the petitioner despite being contractual labourer would be entitled to be regularized as he had been working intermittently when work was not provided to him whereas other juniors shown namely Bhim Dutt, Kamla Devi and Saroj Bala who joined after him had been given sufficient work as reflected in seniority list Ex. P4 and P5 and thus intermittent breaks are also held to be deliberate and during intermittent break present petitioner he shall be deemed to be in continuous service from date of his initial appointment till was illegally terminated without issuance of one month's notice or compensation in lieu thereof. Accordingly, issues No. 1 and 2 are answered in affirmative holding that act of respondents No. 1 & 2 in giving time to time break and finally terminating on 9-9-2014 are improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 5 :

37. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 6 :

38. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other

hand, Id. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others**, AIR 1978 SC 548 in which the Hon'ble Apex Court has dealt with the definition of 'industry' envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Id. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner.

Issue No. 7 :

39. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram**, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors.**, 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India**, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr.** 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors**, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another** (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Issues No. 8 & 9 :

41. Both these issues were not pressed by Id. counsel for respondents at the time of arguments which are decided unpressed in favour of petitioner and against respondents.

Relief :

42. As sequel to my findings on foregoing issues, the claim petition is partly allowed against respondents No. 1 and 2 who are directed to re-engage the petitioner forthwith. It is further held that petitioner shall be in continuous uninterrupted service with the respondents No. 1 and 2 from the date of his initial engagement in the year 2006 and that the breaks given by the respondents No.1 and 2 during this period being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner whose seniority shall be reckoned from his initial date of engagement besides, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. However, claim petition as against M/s Shimla Cleanways (Contractor) respondent No. 3 is hereby dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

43. The reference is answered in the aforesaid terms.

44. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

45. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 12/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Anil Kumar s/o Shri Krishan Chand, r/o V.P.O. Jol Sappar, Tehsil Nadaun, District Hamirpur, H.P. *. Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P.
3. The Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company) *. Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.
For the Respondents 1 & 2 :	Sh. Karan Pathania, Adv.
For the Respondent No. 3 :	Sh. Vikramjeet Sharma, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Anil Kumar s/o Shri Krishan Chand, V.P.O. Jol Sappar, Tehsil Nadaun, District Hamirpur, H.P. during year 2011 to year 2012 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (Principal Employer), (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. (Principal Employer) without complying with the provisions of the Industrial Disputes Act, 1947 and thereafter his services were transferred to the contractor company *i.e.* M/s Shimla Cleanways without his knowledge *w.e.f.* 17-07-2013 where he worked till 08-09-2014 and was again terminated *w.e.f.* 09-09-2014 by the Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 24-12 2014, the name of employer no (i) may be read as “the Dean, College of Horticulture and Foerstry Neri, District Hamirpur, H.P.” instead of “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamipur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 on 22-2-2011 for 89 days who thereafter worked intermittently although with fictional breaks upto the year 2013. Averments made in the claim petition revealed that during above said period, respondents No. 1 and 2 given time to time break to petitioner despite work and funds. It is alleged that respondents No. 1 and 2 had entered into a agreement with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. to outsource unskilled labourers from 1-5-2013 to 31-3-2014 for 11 months and thereafter the contract was renewed for another one year. It is alleged that from 18-7-2013 service of petitioner had been adjusted by respondent No. 1 in the rolls of contractor M/s. Shimla Cleanways without knowledge of petitioner to continue work there uninterruptedly till 31-3-2014. Believing to be working under respondent No.1 for the period aforesaid, it is alleged that Rampal Baniyal under whom petitioner worked as well as respondent No. 3 never disclosed that petitioner had been working under respondent No. 3.

It is alleged that respondents No. 1 and 2 had been marking attendance of petitioner besides making payment of monthly salary and thus without knowledge of petitioner, service conditions has been changed by the respondents. It is alleged that while terminating service on 9-9-2014, no notice or retrenchment compensation in lieu thereof was paid and thus termination of petitioner is stated to be null and void *ab-initio*. It is claimed that respondents No. 1 and 2 had given fictional breaks under two spells by engaging petitioner initially for 89 days thereafter with a gap of 89 days with the object that petitioner did not complete 240 days for the purpose of continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter called 'the Act' for brevity). Reliance has been placed upon judgment of Hon'ble High Court of Punjab and Haryana High Court reported in 1994 LLR 454 titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. in which Hon'ble High Court has held appointment workmen for 89 days to be illegal. It is further alleged that while terminating service of petitioner (i.e. time to time termination and final termination) provisions of Section 25-G of the Act was not adhered to as doctrine of 'Last come First go' was ignored retaining juniors namely Ishwar Dass and Rajeev Kumar whereas service of petitioner had been terminated. The grievance of petitioner further remains that respondents No.1 and 2 had engaged regular unskilled Class-IV workers on regular pay scale in Neri I & II including petitioner on daily wage basis for 89 days onwards for two spells besides respondents No. 1 and 2 had engaged some workmen without break namely Mahinder Singh, Ishwar Singh, Harnam Singh, Gorkh Singh, Tarsem Chand, and Ravi Dutt. It is claimed that while engaging above-named four workmen, respondent No. 1 had shown favouritism to one set of workers whereas service of other 14 workmen including petitioner were consistently given fictional breaks for 89 days who were allowed to work in two spells whereas service of the remaining workmen had been engaged without any break which constituted unfair labour practice. It is alleged that petitioner alongwith 13 others had filed complaint against their illegal termination before Deputy Commissioner, Hamirpur referring to order dated 20-11-2014 passed in CWP No.4991/2012 in which Hon'ble High Court of H.P. had directed respondents to not give fictional breaks and if their (*i.e.* service of petitioner and 13 others) already stand dispensed with, no fresh hands shall be engaged meaning thereby that after 20-11-2014, no fresh hands were to be engaged without first offering the retrenched workers including petitioner. As such, it is also claimed by petitioner that respondents had violated order of Hon'ble High Court of H.P. dated 20-11-2014. It is further alleged that reference No. 154/2012 titled as Mahinder Singh Vs. The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. had been implemented by respondents No. 1 and 2 and said Mahinder Singh was still working with the respondents. It is claimed that Sanjay Mohammad and others had filed application dated 4-5-2013 through e-samadhan regarding fictional breaks and regularization of service of 14 workmen which has been consequently forwarded to respondent No. 2 for necessary action but till the date of filing of claim information sought for has not been provided to petitioner alongwith 13 others who had since been not regularized. It is claimed that respondents No. 1 and 2 had given time to time break in service of petitioner by giving fictional breaks after 89 days in two spells in a year and finally terminated his service on 9-9-2014 which is stated to be illegal and unjustified and same is liable to be quashed and set aside. Accordingly, petitioner has prayed that illegal fictional breaks period *w.e.f.* 2011 to 2013-14 directing the respondents to condone break breaks period in continuity of service for the petitioner with direction to pay wages for the break period. The petitioner further prays that final termination dated 9-9-2014 be set aside and respondents No. 1 and 2 be directed to reinstate petitioner in service forthwith alongwith back wages, seniority and continuity in service with consequential service benefits and to any other relief petitioner is found entitled to.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is

alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional financial liability. It is claimed that respondent university did not have permanent and perennial nature of experimental field work which requires attendance of labourers (during Rabi and Kharif season). It is alleged that seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. are not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HMS-218-62 as is evident from letter No.UHF/IBES/HGI-130-62/1055-71 dated 14-2-2011 which postulates that no seniority to contractual labour shall be given and the service of individual will be terminated after the contract was over as envisaged conditions No. 2 and 8. The respondent No. 3 has asserted that petitioner had accepted the engagement to the contract alongwith terms and conditions of the appointment/engagement letter without any hesitation and did not complete 240 days in any of the calendar years. It is also claimed by the respondents in their reply specifically alleged that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass had been working with the university since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No.827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged through them to carry out the seasonal and adhoc projects work as and when needed and if petitioner wanted to get himself engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including co workers engaging contractor outsourced labourers by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including class-IV employees. Moreover, three Class-IV employees were stated to have been relieved and sent to the State Govt. besides respondents No. 1 and 2 were not in a position to continue the service of labourers and with object that to avoid additional financial liability. No policy of engaging regular labourer for 89 days for t seasonal work and adhoc project under which the labourers were engaged for stipulated period existed. It is further stated that as and when the work and funds were available with the respondents under the time bound project and the service of labour for field work were required, advertisement were made from time to time besides most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides that petitioner was engaged on contractual basis of specific terms and conditions which were binding on petitioner. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period besides termination of service of petitioner including other co-workers and opting to outsource through outside agency which is stated to be facing liability of surplus staff including Class-IV employees. It is claimed that university was not in a position to continue services of labour and to avoid additional liability however university has formed its own policy for engaging labour for 89 days for carrying out the seasonal work and *adhoc* project work under which the labourers were engaged for stipulated period. It is also asserted that as and when works and funds available under the time bound projects, service of labourers for field work was required for which advertisement was made from time to time but petitioner had never turned up to appear an interview so as to seek job. It is alleged that at present unskilled labourers were being engaged through independent agency *i.e.* M/s. Shimla Cleanways and not by university itself and if petitioner wanted to get himself engaged for field work with respondents he needed approach the said agency. Accordingly, denying all allegations of petitioner as contained in claim petition respondents No. 1 and 2 have sought for dismissal of claim petition.

6. Respondent No. 3 contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, mis-joinder and non-joinder of parties, estoppel, cause of action. On merits admitted that respondent No. 3 was engaged for providing unskilled labourer on outsource basis to respondents No. 1 and 2 for which the contract was entered into between the parties which was effective from 1-5-2013 to 31-3-2014 and thereafter the contract in question was renewed for another one year. Admitted that petitioner had worked under the rolls of respondent No. 3 accepting terms and conditions and performed the duties under the contract according to which engagement of particular workers remained in force subject to availability of work besides asserted that the dispute raised against respondent No. 3 did not fall within the ambit of Act as there existed no relationship of employer and employee between the petitioner and respondent No. 3 was not principal employer rather it is respondent No. 1 for whom respondent No. 3 worked as a contractor. Accordingly claim petition is sought to be dismissed.

7. The petitioner filed rejoinder to the joint reply filed by respondents No.1 and 2, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover petitioner to be unemployed and not gainfully employee anywhere from the date of his alleged illegal termination.

8. The petitioner has filed rejoinder separately to the reply filed by respondent No. 3, reiterated his stand as maintained in the claim petition. It is reiterated that service of petitioner had been terminated on verbal order of respondent No.1 *w.e.f.* 9-9-2014 and thereafter new/fresh hands had been engaged by respondent No. 1 who were on the rolls of the respondent No. 3 after termination of service of petitioner.

9. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A, copy of letter dated 3-1-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of letter dated 10-12-2012 Ex. PW1/D, copy of letter dated 22-4-2013 Ex. PW1/E, copy of complaint Ex. PW1/F, copy of letter dated 13-2-2013 Ex. PW1/G, copy of letter dated 27-1-2014 Ex. PW1/H, copy of judgment dated 20-11-2014 Ex. PW1/I, copy of Award dated 24-8-2012 passed by this 100000866952 Court Ex. PW1/J and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents No. 1 and 2 had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence. Respondent No. 3 however did not lead any evidence and closed the same as is evident from statement of Id. Counsel for respondent no.3 record and placed on the file on 31-10-2017.

10. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent Office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list/tentative seniority list of daily paid workers dated 30-4-2010, 11-4-2011, 23-2-2011, 1-10-2014, 17-10-2015, 16-3-2009, 10-6-2011, 7-10-2014, 16-9-2016 respectively Ex. P1 to P9, copy of mandays chart of contractual labourers Ex. P10 and closed evidence. Respondents however did not lead any further evidence so as to repudiate claim of petitioner.

11. I have heard the counsel representing petitioner and Id. Counsel for respondent, gone through records of the case carefully.

12. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner in the year 2011 to 2012 by the respondent Nos. 1&2 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether the services of petitioner were transferred to the contractor company *i.e.* M/s Shimla Cleanways respondent No. 3 without knowledge of petitioner *w.e.f.* 17-7-2013 where he continued work till 8-9-2014 as alleged. If so, its effect? . . .*OPP*.
3. Whether final termination of services of petitioner *w.e.f.* 09-09-2014 is/was improper and unjustified as alleged? . . .*OPP*.
4. If issue No.1 or issue No. 3 or both are proved in affirmative, to what relief the petitioner is entitled from respondents as alleged? . . .*OPP*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR 1 to 3*.
6. Whether the respondent University being educational institution is not covered under the jurisdiction of this court as alleged? . . .*OPR 1&2*.
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR 1&2*.
8. Whether the claim petition is bad for mis-joinder and non-joinder of the necessary parties as alleged? . . .*OPR3*.
9. Whether the petitioner is estopped to file present claim petition on account of his act and conduct as alleged? . . .*OPR3*.
10. Whether the petitioner has no cause of action against the respondent No.3 as alleged? . . .*OPR3*.
11. Whether respondent No. 3 being contractor worked under contract of award by the respondent No. 1&2 for specific purpose as alleged? . . .*OPR3*.

Relief :

13. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

- | | |
|----------------------|-----------|
| <i>Issue No. 1 :</i> | Yes |
| <i>Issue No. 2 :</i> | Discussed |
| <i>Issue No. 3 :</i> | Yes |
| <i>Issue No. 4 :</i> | Discussed |

<i>Issue No. 5 :</i>	No
<i>Issue No. 6 :</i>	No
<i>Issue No. 7 :</i>	No
<i>Issue No. 8 :</i>	No
<i>Issue No. 9 :</i>	No
<i>Issue No. 10 :</i>	Discussed
<i>Issue No. 11 :</i>	Discussed
<i>Relief :</i>	Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2, 3, 4, 10 and 11:

14. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

15. Admittedly, petitioner had been engaged by respondents No. 1 and 2 in year 2011 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor respondent No. 3 for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents No.1 and 2 is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of atleast 15 days was necessary. It is admittedly not case of respondents No. 1 and 2 that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents No. 1 and 2 that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner qua termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents No. 1 and 2 deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

16. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

17. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents No. 1 and 2 being employers have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

18. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2012 who continued to work with respondents till 8-9-2014 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

19. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

20. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is

found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchmen' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulour employers to shunt out workers in the graph of non renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."**

21. It is admittedly not the case of respondents No. 1 and 2 that petitioner could not be deployed or employed or say that respondents No. 1 and 2 had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents No.1 and 2 had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P. C. Sharma in cross-examination who is the only witness examined by respondents No. 1 and 2. Equally important to mention here is that while filing reply respondents No. 1 and 2 have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time, their names too have not been disclosed establishes that respondents No. 1 and 2 from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2012 to 2014 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents No. 1 and 2 to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents No. 1 and 2 establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

22. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2012 relating to petitioner which showed that petitioner had worked under project HMS 218-62 etc. from 21-2-2011 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents No. 1 and 2 so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent

breaks had been given from time to time during total period petitioner remained engaged with the respondents No. 1 and 2.

23. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondents while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P4 shows that Bhim Dutt and Ms. Kamla Devi figuring at serial No. 18 & 19 have joined on 8-5-2012 & 15-5-2012 respectively. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 244 days in the year 2012 and 358 days in 2013. Similarly, Kamla Devi figuring at serial No. 19 in seniority list Ex. P4 is shown to have worked for 233 days in 2012 and 337 days in 2013. With the aid of these entries concerning Bhim Dutt and Kamla Devi figuring at serial No. 18 and 19, it has been contended that there was sufficient work and funds available with the respondents No. 1 and 2 in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 12 and had joined on 21-2-2011 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 21-2-2011 till 2012 deliberately by respondents No. 1 and 2 despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 26 times from 2011 to 2014 in project HMS 218-62. If Bhim Dutt and Kamla Devi could be given work for more than 300 days in a year in particular year from 2012 to 2013, there was no reasons or compulsion for the respondents No. 1 and 2 to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

24. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.18 and 19 names of Bhim Dutt and Kamla Devi existed but at serial Nos. 20 name of Saroj Bala had been mentioned who was shown to have joined and worked with respondents on 2012 to 2013 respectively much later than petitioner who joined in year 2011. As such, latest seniority list available at the time when petitioner was removed from service except Bhim Dutt and Kamla Devi, others are shown to have joined in the year 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim qua deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. representing respondents No. 1 and 2 has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 30-9-2014. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such,

respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

25. Ld. counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents No. 1 and 2 had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor respondent No. 3 engaged to provide unskilled labourers on outsource basis to respondents No. 1 and 2 which tentamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2011 and no prior notice was served upon him in 2014 notifying petitioner to join contractor respondent No. 3 who was to provide labourers to respondents No. 1 and 2 on the basis of some agreement entered into between respondents No. 1 and 2 and contractor respondent No. 3. Ld. counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/I of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents No. 1 and 2 that any notice was served upon petitioner as could also be gathered from cross examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2014, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents No. 1 and 2, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner, no compensation was paid by respondents No. 1 and 2. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents No.1 and 2 had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents No. 1 and 2.

26. Ld. Counsel for the respondents No. 1 and 2 had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of 'retrenchment' and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the**

purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N.S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub-cl. (bb) to cl. (oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See *H.D. Singh. Reserve Bank of India*. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their

job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

27. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's** case relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society.** It was observed that **the employer is always in a position to dictate the terms of service vis-à-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents No. 1 and 2 had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

28. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by

respondents No. 1 and 2 so that petitioner did not become permanent and at the same time act of respondents No. 1 and 2 in throwing out petitioner from work with contractor respondent No. 3 without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

29. Thus, in the case before this court respondents No.1 and 2 had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents No. 1 and 2 had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abruptly engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2011 to 2014 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents No. 1 and 2 with the object to avoid financial liability upon respondents No. 1 and 2 which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

30. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/J passed in Reference No.154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/J. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondents had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/J above-named, Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that

petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 25 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages.

31. In so far as claim of petitioner as against M/s Shimla Cleanways Contractor respondent No. 3 the contractor is concerned, it would be relevant, at the outset to refer to mandays chart as Ex. P10 concerning petitioner in which his name figures at serial No.18. A bare glance at the above said document would show that petitioner had been engaged initially on 21-2-2011 who continued to work with the respondents No. 1 and 2 till 31-12-2012 and thereafter is shown to have been engaged on 15-7-2013 to 30-9-2014 for different number of working days enumerated therein. In the column of note, there is stipulation to the effect that service of labourers *w.e.f.* 1-5-2013 were engaged through outsourcing agencies of manpower through contractor as per outsource policy introduced from 4/2013. It was further stipulated in this note that consolidated wages for the particular month was paid to contractor as per policy. Be it stated that note appended to mandays chart Ex. P10 concerning Manjeet Kumar neither stipulated name of the contractor nor evidence has been led showing that consolidated wages concerning or including petitioner's wages for specific months enumerated in Ex. P10 was paid to contractor whose name has not even been mentioned and as such no inference can be drawn that respondent No. 3 paid wages to petitioner for different months. It can also be noticed from above said details in Ex. P10 *qua* period for which petitioner had worked or say had been shown to be engaged by the university initially for nine spells whereas under contractor for next ten spells. With the aid of this document, respondents No.1 and 2 have made futile endeavour to defeat the claim of petitioner by submitting that petitioner was no more employee of university who was working under contractor respondent No. 3. In reply respondent No. 3 has maintained that it had been engaged for providing labourers on outsource basis to respondent No. 1 on the basis of which petitioner was engaged. There is no documentary evidence on record establishing that petitioner was initially appointed by respondent No.1 and thereafter his service were placed at the disposal of respondent No. 3 or that he was transferred at any point of time for which he remained engaged. Significantly, respondent No. 3 did not lead any evidence as *ld.* counsel for the respondent No. 3 has made statement before this court on 31-10-2017 that no evidence was to be led on behalf of respondent No. 3 and thus, in absence of any evidence led by respondent No. 3, it cannot be stated that plea set up in the reply stood proved as against the petitioner.

32. RW1 Dr. P.C. Sharma representing respondents No. 1 &2 has not stated even a single word *qua* engagement of respondent No. 3 who employed petitioner as his affidavit Ex. RW1/A merely stipulated that unskilled labourers were being engaged through independent agency *i.e.* M/s Shimla Cleanways and not by the university itself besides stated that if petitioner wanted to get himself engaged for field work he should approach the contractor which showed that the only witness of respondents No. 1 and 2 did not know if petitioner was placed under respondent No. 3. It is nowhere in evidence of respondents No. 1 and 2 that petitioner had been engaged by respondent No. 3 irrespective of plea of respondent No. 3 that petitioner was engaged by him on demand of respondents No. 1 and 2. It is to be seen by this court if petitioner worked under respondent No. 3 and was its employee or was under supervision of university and its field staff while being engaged for carrying out different projects.

33. Reliance has been placed on judgment reported in **2015 LLR 580** titled as **General Manger, Bharat Heavy Electricals Ltd. Ranipet Vs. Canteen Workers of BHEL, rep. by BHEL Canteen Workers Union, Chennai & Ors.** in which the Hon'ble High Court of Madras has held that when it is proved that employment contract with the contractor is sham and nominal,

the employees of the contractor will be having their right to be absorbed as regular employees of the principal employer.

34. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of Bombay reported in **2015 LLR 974** titled as **Goa MRF Employees' Union Vs. ICARUS Food and Farm and Others** where the employees were engaged through contractor working for the principal employer continuously for a long period, would, in reality, be the employees of the principal employer. Ld. Authorized Representative for the petitioner has taken me through oral evidence on record which establish that factually entire control and supervision of petitioner in this case was by the university and its field staff and not of respondent No. 3. Be it stated that petitioner PW1 in cross-examination has denied to have worked under M/s Shimla Cleanways and his officials rather he asserted that officers of university were supervising his work. He has denied that payments of salary etc. was being made by M/s. Shimla Cleanways rather stated that salary was being paid by university. Not only this, even attendance was being marked by the officers of university and field assistants and not by officers of M/s Shimla Cleanways and whatever worked was assigned by field assistants of the university, the same was performed by him. In cross examination petitioner has shown ignorance if contract was entered into between respondents No. 1 and 2 and between in respondent No. 3. On the other hand, for providing unskilled labourers on outsource basis, petitioner admitted that he was working with the university before 1-5-2013. He has further stated that no appointment letter was given by M/s Shimla Cleanways. Thus, when entire supervision or control was that of principal employer *i.e.* university and applying the ratio of judgments referred to above, it may not be erroneous to conclude here respondents No. 1 and 2 continue to be principal employer of petitioner.

35. In so far as disengagement of petitioner on 09-9-2014 by respondent Nos. 1 and 2 or by respondent No. 3 M/s Shimla Cleanways is concerned, there is no reliable evidence linking petitioner to have been engaged by M/s Shimla Cleanways in the manner projected in this case and as documentary evidence Ex. P10 does not specifically substantiate plea of respondents No. 1 and 2 qua engagement of respondent No. 3 as neither the name of contractor was mentioned Ex. P10 nor wages in consolidated form being paid to petitioner has been proved as note appended to Ex. P10 mandays chart of petitioner does not stipulate any such fact specifically and no witness has been examined by respondents No. 1 and 2 to prove this fact. Be it stated that RW1 is totally silent on this aspect. It is nowhere in the evidence of respondents No.1 and 2 that petitioner had knowledge either of being transferred to respondent No. 3 on 15-7-2013 and RW1 the sole respondent contesting on behalf of respondents No. 1 and 2 has specifically stated that petitioner had been transferred to work under contractor but his statement on oath in cross-examination does not clarify specifically in what manner petitioner was transferred or made to work under respondent No. 3 rather shows that petitioner worked as before with the university ever since 2011 and the arrangement of outsourcing was never notified to him as there is no written document establishing that he was made to work with M/s Shimla Cleanways and similarly when on 15-7-2013 petitioner was working with the university respondent No. 3 did not issue any letter to petitioner to work with him or that he was on the roll of respondent No. 3. Admittedly, petitioner had worked 30th September, 2014 as per mandays chart with university and while crossexamining petitioner as PW1, Ld. Counsel for respondent Nos. 1 to 2 did not put a specific question that petitioner was appointed by M/s Shimla Cleanways who has denied that he worked under M/s Shimla Cleanways besides shown ignorance if M/s Shimla Cleanways had been engaged by respondents No. 1 and 2 besides stated that field staff of university used to pay wages and even the attendance was being marked by them. Significantly, petitioner admitted that whatever work was assigned by university petitioner performed the same. Even cross-examination of petitioner by respondent No. 3 reveal that petitioner had been engaged by university besides supervision was also conducted by field staff of university. He has admitted that M/s Shimla Cleanways did not give any appointment letter when cross-examined by Ld. Counsel for respondent No. 3. Thus, from evidence on record led by

respondents it is not established that petitioner had been transferred in the manner projected by respondent No. 1 who has been held to be principal employer of petitioner and the petitioner would be liable to be absorbed on rolls of respondent Nos. 1 and 2 and not on rolls of respondent No. 3 who was merely contractor and even if respondent No. 3 *i.e.* contractor had been engaged by respondents No. 1 and 2, the engagement manifestly appear to be sham transaction as practically respondents No. 1 and 2 had complete control over working of petitioner as has been held in **2015 LLR 580**. In another judgment titled as **Mannu Khan Vs. Union of India** reported in **1989 (2) SCC 99**, the Hon'ble Apex Court has regularized contract labourers of cleaning catering establishment and pantry cars in Western Railways. It also needs to be pointed out that none of the respondents had obtained licence under Contract Labour (Regulations & Abolition) Act, 1970 as there is no evidence to this effect adduced by respondents and in such like situation, respondents No.1 and 2 who had engaged respondent No. 3 to provide unskilled labourers are held to be principal employers of petitioner. Accordingly, when respondent No. 3 was engaged to provide labourers who was not registered under Contract Labour (Regulations & Abolition) Act, 1970, he cannot be stated to be registered contractor or principal employer as he was primarily working as contractor and engaged labourers for principal employers as stated above. Accordingly, no relief can be granted to petitioner against respondent No.3 as respondents 1 and 2 are held to be principal employers of petitioner as stated above.

36. In view of foregoing discussions, it is held that the petitioner despite being contractual labourer would be entitled to be regularized as he had been working intermittently when work was not provided to him whereas other juniors shown namely Bhim Dutt, Kamla Devi and Saroj Bala who joined after him had been given sufficient work as reflected in seniority list Ex. P4 and P5 and thus intermittent breaks are also held to be deliberate and during intermittent break present petitioner he shall be deemed to be in continuous service from date of his initial appointment till was illegally terminated without issuance of one month's notice or compensation in lieu thereof. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents No. 1 & 2 in giving time to time break and finally terminating on 2012 and 9-9-2014 are improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No.5 :

37. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 6 :

38. Ld. counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of 'industry' envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to

repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner.

Issue No. 7:

39. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Issues No. 8 & 9 :

41. Both these issues were not pressed by Id. Counsel for respondents at the time of arguments which are decided unpressed in favour of petitioner and against respondents.

Relief :

42. As sequel to my findings on foregoing issues, the claim petition is partly allowed against respondents No. 1 and 2 who are directed to re-engage the petitioner forthwith. It is further

held that petitioner shall be in continuous uninterrupted service with the respondents No. 1 and 2 from the date of his initial engagement in the year 2011 and that the breaks given by the respondents No. 1 and 2 during this period being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner whose seniority shall be reckoned from his initial date of engagement besides, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. However, claim petition as against M/s Shimla Cleanways (Contractor) respondent No. 3 is hereby dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

43. The reference is answered in the aforesaid terms.

44. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

45. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 13/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Manjeet Kumar s/o Shri Pyar Chand, r/o Village Sohri, P.O. Jol Sappar, Tehsil Nadaun, District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y. S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P.
3. The Contractor, M/S Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company) . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondents 1 & 2 : Sh. Karan Pathania, Adv.
For the Respondent No. 3 : Sh. Vikramjeet Sharma, Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Manjeet Kumar s/o Shri Pyar Chand, r/o Village Sohri, P.O. Jol Sappar, Tehsil Nadaun, District Hamirpur, H.P. during year 2012 by (i) the Director, Institute of Biotechnology & Environment Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (Principal Employer), (ii) the Registrar, Dr. Y. S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. (Principal Employer) without complying with the provisions of the Industrial Disputes Act, 1947 and thereafter his services were transferred to the contractor company *i.e.* M/s Shimla Cleanways without his knowledge *w.e.f.* 18-08-2013 where he worked till 31-03-2014 and was again terminated *w.e.f.* 01-04-2014 by the Contractor, M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. (Contractor Company), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 24-12-2014, the name of employer no (i) may be read as 'the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.' instead of 'the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.', which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 on 20-1-2011 for 89 days who thereafter worked intermittently although with fictional breaks upto the year 2013. Averments made in the claim petition revealed that during above said period, respondents No. 1 and 2 given time to time break to petitioner despite work and funds. It is alleged that respondents No. 1 and 2 had entered into a agreement with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. to outsource unskilled labourers from 1-5-2013 to 31-3-2014 for 11 months and thereafter the contract was renewed for another one year. It is alleged that from 18-7-2013 service of petitioner had been adjusted by respondent No. 1 in the rolls of contractor M/s Shimla Cleanways without knowledge of petitioner to continue work there uninterruptedly till 31-3-2014. Believing to be working under respondent No.1 for the period aforesaid, it is alleged that Rampal Baniyal under whom petitioner worked as well as respondent No. 3 never disclosed that petitioner had been working under respondent No. 3. It is alleged that respondents No. 1 and 2 had been marking attendance of petitioner besides making payment of monthly salary and thus without knowledge of petitioner, service conditions has been changed by the respondents. It is alleged that while terminating service on 1-4-2014, no notice or retrenchment compensation in lieu thereof was paid and thus termination of petitioner is stated to be null and void *ab-initio*. It is claimed that respondents No. 1 and 2 had given fictional breaks under two spells by engaging petitioner initially for 89 days thereafter with a gap of 89 days with the object that petitioner did not complete 240 days for the purpose of continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter called 'the Act' for brevity). Reliance has been placed upon judgment of Hon'ble High Court of Punjab and Haryana

High Court reported in 1994 LLR 454 titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *Vs.* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. in which Hon'ble High Court has held appointment workmen for 89 days to be illegal. It is further alleged that while terminating service of petitioner (*i.e.* time to time termination and final termination) provisions of Section 25-G of the Act was not adhered to as doctrine of 'Last come First go' was ignored retaining juniors namely Ishwar Dass and Rajeev Kumar whereas service of petitioner had been terminated. The grievance of petitioner further remains that respondents No. 1 and 2 had engaged regular unskilled Class-IV workers on regular pay scale in Neri I & II including petitioner on daily wage basis for 89 days onwards for two spells besides respondents No.1 and 2 had engaged some workmen without break namely Mahinder Singh, Ishwar Singh, Harnam Singh, Gorkh Singh, Tarsem Chand, and Ravi Dutt. It is claimed that while engaging above-named four workmen, respondent No. 1 had shown favouritism to one set of workers whereas service of other 14 workmen including petitioner were consistently given fictional breaks for 89 days who were allowed to work in two spells whereas service of the remaining workmen had been engaged without any break which constituted unfair labour practice. It is alleged that petitioner alongwith 13 others had filed complaint against their illegal termination before Deputy Commissioner, Hamirpur referring to order dated 20-11-2014 passed in CWP No. 4991/2012 in which Hon'ble High Court of H.P. had directed respondents to not give fictional breaks and if their (*i.e.* service of petitioner and 13 others) already stand dispensed with, no fresh hands shall be engaged meaning thereby that after 20-11-2014, no fresh hands were to be engaged without first offering the retrenched workers including petitioner. As such, it is also claimed by petitioner that respondents had violated order of Hon'ble High Court of H.P. dated 20-11-2014. It is further alleged that reference No. 154/2012 titled as Mahinder Singh *Vs.* The Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. had been implemented by respondents No. 1 and 2 and said Mahinder Singh was still working with the respondents. It is claimed that Sanjay Mohammad and others had filed application dated 4-5-2013 through esamadhan regarding fictional breaks and regularization of service of 14 workmen which has been consequently forwarded to respondent No. 2 for necessary action but till the date of filing of claim information sought for has not been provided to petitioner alongwith 13 others who had since been not regularized. It is claimed that respondents No.1 and 2 had given time to time break in service of petitioner by giving fictional breaks after 89 days in two spells in a year and finally terminated his service on 1-4-2014 which is stated to be illegal and unjustified and same is liable to be quashed and set aside. Accordingly, petitioner has prayed that illegal fictional breaks period *w.e.f.* 2011 to 2012-13 directing the respondents to condone break breaks period in continuity of service for the petitioner with direction to pay wages for the break period. The petitioner further prays that final termination dated 1-4-2014 be set aside and respondents No. 1 and 2 be directed to reinstate petitioner in service forthwith along-with back wages, seniority and continuity in service with consequential service benefits and to any other relief petitioner is found entitled to.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional financial liability. It is claimed that respondent university did not have permanent and perennial nature of experimental field work which requires attendance of labourers (during Rabi and Kharif season). It is alleged that seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. are not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI130-62 as is evident from letter No.

UHF/IBES/HGI-130-62/1055-71 dated 3-10-2012 which postulates that no seniority to contractual labour shall be given and the service of individual will be terminated after the contract was over as envisaged conditions No. 2 and 8. The respondent No. 3 has asserted that petitioner had accepted the engagement to the contract alongwith terms and conditions of the appointment/engagement letter without any hesitation and did not complete 240 days in any of the calendar years. It is also claimed by the respondents in their reply specifically alleged that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass had been working with the university since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged through them to carry out the seasonal and *ad hoc* projects work as and when needed and if petitioner wanted to get himself engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including co workers engaging contractor outsourced labourers by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV employees. Moreover, three Class-IV employees were stated to have been relieved and sent to the State Govt. besides respondents No. 1 and 2 were not in a position to continue the service of labourers and with object that to avoid additional financial liability. No policy of engaging regular labourer for 89 days for the seasonal work and *ad hoc* project under which the labourers were engaged for stipulated period existed. It is further stated that as and when the work and funds were available with the respondents under the time bound project and the service of labour for field work were required, advertisement were made from time to time besides most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides that petitioner was engaged on contractual basis of specific terms and conditions which were binding on petitioner. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period besides termination of service of petitioner including other co-workers and opting to outsource through outside agency which is stated to be facing liability of surplus staff including Class-IV employees. It is claimed that university was not in a position to continue services of labour and to avoid additional liability however university has formed its own policy for engaging labour for 89 days for carrying out the seasonal work and *ad hoc* project work under which the labourers were engaged for stipulated period. It is also asserted that as and when works and funds available under the time bound projects, service of labourers for field work was required for which advertisement was made from time to time but petitioner had never turned up to appear an interview so as to seek job. It is alleged that at present unskilled labourers were being engaged through independent agency *i.e.* M/s. Shimla Cleanways and not by university itself and if petitioner wanted to get himself engaged for field work with respondents he needed approach the said agency. Accordingly, denying all allegations of petitioner as contained in claim petition respondents No. 1 and 2 have sought for dismissal of claim petition.

6. Respondent No. 3 contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, mis-joinder and non-joinder of parties, estoppel, cause of action. On merits admitted that respondent No. 3 was engaged for providing unskilled labourer on outsource basis to respondents No. 1 and 2 for which the contract was entered into between the parties which was effective from 1-5-2013 to 31-3-2014 and thereafter the contract in question was renewed for another one year. Admitted that petitioner had worked under the rolls of respondent No. 3 accepting terms and conditions and performed the duties under the contract according to which engagement of particular workers remained in force subject to availability of work besides asserted

that the dispute raised against respondent No. 3 did not fall within the ambit of Act as there existed no relationship of employer and employee between the petitioner and respondent No. 3 was not principal employer rather it is respondent No. 1 for whom respondent No. 3 worked as a contractor. Accordingly claim petition is sought to be dismissed.

7. The petitioner filed rejoinder to the joint reply filed by respondents No. 1 and 2, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover petitioner to be unemployed and not gainfully employee anywhere from the date of his alleged illegal termination.

8. The petitioner has filed rejoinder separately to the reply filed by respondent No. 3, reiterated his stand as maintained in the claim petition. It is reiterated that service of petitioner had been terminated on verbal order of respondent No. 1 *w.e.f.* 1-4-2014 and thereafter new/fresh hands had been engaged by respondent No. 1 who were on the rolls of the respondent No. 3 after termination of service of petitioner.

9. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A, copy of letter dated 3-1-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of letter dated 10-12-2012 Ex. PW1/D, copy of letter dated 22-4-2013 Ex. PW1/E, copy of complaint Ex. PW1/F, copy of letter dated 13-2-2013 Ex. PW1/G, copy of letter dated 27-1-2014 Ex. PW1/H, copy of judgment dated 20-11-2014 Ex. PW1/I, copy of Award dated 24-8-2012 passed by this Court Ex. PW1/J. On the other hand, repudiating the evidence led by petitioner, respondents No. 1 and 2 had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence. Respondent No. 3 however did not lead any evidence and closed the same as is evident from statement of Id. Counsel for respondent No. 3 record and placed on the file on 31-10-2017.

10. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list/tentative seniority list of daily paid workers dated 30-4-2010, 11-4-2011, 23-2-2011, 1-10-2014, 17-10-2015, 16-3-2009, 10-6-2011, 7-10-2014, 16-9-2016 respectively Ex. P1 to P9, copy of mandays chart of contractual labourers Ex. P10 and closed evidence. Respondents however did not lead any further evidence so as to repudiate claim of petitioner.

11. I have heard the counsel representing petitioner and Id. Counsel. for respondent, gone through records of the case carefully.

12. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner in the year 2012 by the respondent Nos. 1 & 2 is/was improper and unjustified as alleged? . . .*OPP.*

2. Whether the services of petitioner were transferred to the contractor company *i.e.* M/s Shimla Cleanways respondent No. 3 without knowledge of petitioner *w.e.f.* 18-7-2013 where he continued work till 31-3-2014 as alleged. If so, its effect? *..OPP.*
3. Whether termination of services of petitioner *w.e.f.* 01-04-2014 is/was improper and unjustified as alleged? *..OPP.*
4. If issue No. 1 or issue No. 3 or both are proved in affirmative, to what relief the petitioner is entitled from respondents as alleged? *..OPP.*
5. Whether the claim petition is not maintainable in the present form as alleged? *..OPR 1 to 3.*
6. Whether the respondent University being educational institution is not covered under the jurisdiction of this court as alleged? *..OPR 1&2.*
7. Whether the claim petition is time barred by limitation as alleged? *..OPR 1&2*
8. Whether the claim petition is bad for mis-joinder and non-joinder of the necessary parties as alleged? *..OPR3*
9. Whether the petitioner is estopped to file present claim petition on account of his act and conduct as alleged? *..OPR3*
10. Whether the petitioner has no cause of action against the respondent No. 3 as alleged? *..OPR3*
11. Whether respondent No. 3 being contractor worked under contract of award by the respondent No. 1&2 for specific purpose as alleged? *..OPR3*

Relief :

13. For the reasons to be recorded hereinafter while discussing the aforesaid issues my findings on the aforesaid issues are as follows:

<i>Issue No. 1 :</i>	Yes
<i>Issue No. 2 :</i>	Discussed
<i>Issue No. 3 :</i>	Yes
<i>Issue No. 4 :</i>	Discussed
<i>Issue No. 5 :</i>	No
<i>Issue No. 6 :</i>	No
<i>Issue No. 7 :</i>	No
<i>Issue No. 8 :</i>	No
<i>Issue No. 9 :</i>	No

<i>Issue No. 10 :</i>	Discussed
<i>Issue No. 11 :</i>	Discussed
<i>Relief :</i>	Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2, 3, 4, 10 and 11 :

14. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

15. Admittedly, petitioner had been engaged by respondents No.1 and 2 in year 2012 initially for a period of 89 days and thereafter with intermittent breaks several times till 2012 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor respondent No. 3 for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents No. 1 and 2 is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of atleast 15 days was necessary. It is admittedly not case of respondents No. 1 and 2 that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents No. 1 and 2 that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(o)(b) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner qua termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents No. 1 and 2 deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

16. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

17. Ld. counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents No. 1 and 2 being employers have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by

reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

18. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2009 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

19. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

20. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an

outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."**

21. It is admittedly not the case of respondents No. 1 and 2 that petitioner could not be deployed or employed or say that respondents No. 1 and 2 had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents No. 1 and 2 had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents No. 1 and 2. Equally important to mention here is that while filing reply respondents No. 1 and 2 have withheld facts qua number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time, their names too have not been disclosed establishes that respondents No. 1 and 2 from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2012 to 2014 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents No.1 and 2 to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents No. 1 and 2 establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

22. In order to prove his case, the petitioner has placed reliance upon Ex. R10 the mandays on fixed wages *w.e.f.* 2012 relating to petitioner which showed that petitioner had worked under project HMS 218-62 *etc.* from 21-1-2012 for 89 days and thereafter with several intermittent breaks till 31-3-2014 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents No. 1 and 2 so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents No. 1 and 2.

23. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondents while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P4 shows that Bhim Dutt and Ms.

Kamla Devi figuring at serial No. 18 & 19 have joined on 8-5-2012 & 15-5-2012 respectively. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 244 days in the year 2012 and 358 days in 2013. Similarly, Kamla Devi figuring at serial no.19 in seniority list Ex. P4 is shown to have worked for 233 days in 2012 and 337 days in 2013. With the aid of these entries concerning Bhim Dutt and Kamla Devi figuring at serial No. 18 and 19, it has been contended that there was sufficient work and funds available with the respondents No.1 and 2 in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 14 and had joined on 21-1-2012 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 21-1-2012 till 2014 deliberately by respondents No. 1 and 2 despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 18 times from 2012 to 2014 in project HMS 218-62. If Bhim Dutt and Kamla Devi could be given work for more than 300 days in a year in particular year from 2012 to 2013, there was no reasons or compulsion for the respondents No.1 and 2 to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

24. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No. 18 and 19 names of Bhim Dutt and Kamla Devi existed but at serial Nos. 20 name of Saroj Bala had been mentioned who was shown to have joined and worked with respondents on 2012 to 2013 respectively much later than petitioner who joined in January, 2012. As such, latest seniority list available at the time when petitioner was removed from service except Bhim Dutt and Kamla Devi, others are shown to have joined in the year 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. representing respondents No. 1 and 2 has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

25. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents No.1 and 2 had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor respondent No. 3 engaged to provide unskilled labourers on outsource basis to respondents No. 1 and 2 which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2012 and no prior notice was served upon him in 2013 notifying petitioner to join contractor respondent No. 3 who was to provide labourers to respondents No. 1 and 2 on the basis of some agreement entered into between respondents No. 1 and 2 and contractor respondent No. 3. Ld. counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as

mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/I of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents No.1 and 2 that any notice was served upon petitioner as could also be gathered from cross examination of RW1 Dr. P. C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2014, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents No. 1 and 2, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner, no compensation was paid by respondents No. 1 and 2. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents No. 1 and 2 had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents No. 1 and 2.

26. Ld. counsel for the respondents No. 1 and 2 had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of “retrenchment” and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N.S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them**. Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide**. An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See *H.D. Singh Vs. Reserve Bank of India*. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in *Haryana State Electronics Development Corporation Limited Vs. Mamni* (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and

reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

27. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub Clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-à-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents No. 1 and 2 had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

28. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression “retrenchment”.** The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed. Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents No. 1 and 2 so that petitioner did not become permanent and at the same time act of respondents No. 1 and 2 in throwing out petitioner from work with contractor respondent No. 3 without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

29. Thus, in the case before this court respondents No. 1 and 2 had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on

record, it may not be erroneous to conclude that respondents No. 1 and 2 had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2012 to 2014 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents No. 1 and 2 with the object to avoid financial liability upon respondents No. 1 and 2 which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

30. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/J passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/J. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondents had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/J above-named, Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 40 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages.

31. In so far as claim of petitioner as against M/s Shimla Cleanways Contractor respondent No. 3 the contractor is concerned, it would be relevant, at the outset to refer to mandays chart as Ex. P10 concerning petitioner in which his name figures at serial No. 14. A bare glance at the above said document would show that petitioner had been engaged initially on 21-1-2012 who continued to work with the respondents No. 1 and 2 till 31-12-2012 and thereafter is shown to have

been engaged on 15-7-2013 to 31-3-2014 for different number of working days enumerated therein. In the column of note, there is stipulation to the effect that service of labourers *w.e.f.* 1-5-2013 were engaged through outsourcing agencies of manpower through contractor as per outsource policy introduced from 4/2013. It was further stipulated in this note that consolidated wages for the particular month was paid to contractor as per policy. Be it stated that note appended to mandays chart Ex. P10 concerning Manjeet Kumar neither stipulated name of the contractor nor evidence has been led showing that consolidated wages concerning or including petitioner's wages for specific months enumerated in Ex. P10 was paid to contractor whose name has not even been mentioned and as such no inference can be drawn that respondent No. 3 paid wages to petitioner for different months. It can also be noticed from above said details in Ex. P10 *qua* period for which petitioner had worked or say had been shown to be engaged by the university initially for nine spells whereas under contractor for next ten spells. With the aid of this document, respondents No.1 and 2 have made futile endeavour to defeat the claim of petitioner by submitting that petitioner was no more employee of university who was working under contractor respondent No. 3. In reply respondent No. 3 has maintained that it had been engaged for providing labourers on outsource basis to respondent No. 1 on the basis of which petitioner was engaged. There is no documentary evidence on record establishing that petitioner was initially appointed by respondent No. 1 and thereafter his service were placed at the disposal of respondent No. 3 or that he was transferred at any point of time for which he remained engaged. Significantly, respondent No. 3 did not lead any evidence as *Id.* Counsel for the respondent No. 3 has made statement before this court on 31-10-2017 that no evidence was to be led on behalf of respondent No. 3 and thus, in absence of any evidence led by respondent No. 3, it cannot be stated that plea set up in the reply stood proved as against the petitioner.

32. RW1 Dr. P.C. Sharma representing respondents No. 1 & 2 has not stated even a single word *qua* engagement of respondent No. 3 who employed petitioner as his affidavit Ex. RW1/A merely stipulated that unskilled labourers were being engaged through independent agency *i.e.* M/s Shimla Cleanways and not by the university itself besides stated that if petitioner wanted to get himself engaged for field work he should approach the contractor which showed that the only witness of respondents No. 1 and 2 did not know if petitioner was placed under respondent No. 3. It is nowhere in evidence of respondents No. 1 and 2 that petitioner had been engaged by respondent No. 3 irrespective of plea of respondent No. 3 that petitioner was engaged by him on demand of respondents No. 1 and 2. It is to be seen by this court if petitioner worked under respondent No. 3 and was its employee or was under supervision of university and its field staff while being engaged for carrying out different projects.

33. Reliance has been placed on judgment reported in **2015 LLR 580** titled as **General Manger, Bharat Heavy Electricals Ltd. Ranipet Vs. Canteen Workers of BHEL, rep. by BHEL Canteen Workers Union, Chennai & Ors.** in which the Hon'ble High Court of Madras has held that when it is proved that employment contract with the contractor is sham and nominal, the employees of the contractor will be having their right to be absorbed as regular employees of the principal employer.

34. *Ld.* counsel for the petitioner has relied upon the judgment of Hon'ble High Court of Bombay reported in **2015 LLR 974** titled as **Goa MRF Employees' Union Vs. ICARUS Food and Farm and Others** where the employees were engaged through contractor working for the principal employer continuously for a long period, would, in reality, be the employees of the principal employer. *Ld.* Authorized Representative for the petitioner has taken me through oral evidence on record which establish that factually entire control and supervision of petitioner in this case was by the university and its field staff and not of respondent No. 3. Be it stated that petitioner PW1 in cross-examination has denied to have worked under M/s Shimla Cleanways and his officials rather he asserted that officers of university were supervising his work. He has denied that

payments of salary *etc.* was being made by M/s. Shimla Cleanways rather stated that salary was being paid by university. Not only this, even attendance was being marked by the officers of university and field assistants and not by officers of M/s Shimla Cleanways and whatever work was assigned by field assistants of the university, the same was performed by him. In cross examination petitioner has shown ignorance if contract was entered into between respondents No. 1 and 2 and between in respondent No. 3. On the other hand, for providing unskilled labourers on outsource basis, petitioner admitted that he was working with the university before 1-5-2013. He has further stated that no appointment letter was given by M/s Shimla Cleanways. Thus, when entire supervision or control was that of principal employer *i.e.* university and applying the ratio of judgments referred to above, it may not be erroneous to conclude here respondents No.1 and 2 continue to be principal employer of petitioner.

35. In so far as disengagement of petitioner on 01-4-2014 by respondent Nos. 1 and 2 or by respondent No. 3 M/s Shimla Cleanways is concerned, there is no reliable evidence linking petitioner to have been engaged by M/s Shimla Cleanways in the manner projected in this case and as documentary evidence Ex. P10 does not specifically substantiate plea of respondents No. 1 and 2 qua engagement of respondent No. 3 as neither the name of contractor was mentioned Ex. P10 nor wages in consolidated form being paid to petitioner has been proved as note appended to Ex. P10 mandays chart of petitioner does not stipulate any such fact specifically and no witness has been examined by respondents No 1. and 2 to prove this fact. Be it noticed that RW1 is totally silent on this aspect. It is nowhere in the evidence of respondents No. 1 and 2 that petitioner had knowledge either of being transferred to respondent No. 3 on 18-7-2013 and RW1 the sole respondent contesting on behalf of respondents No. 1 and 2 has specifically stated that petitioner had been transferred to work under contractor but his statement on oath in cross examination does not clarify specifically in what manner petitioner was transferred or made to work under respondent No. 3 rather shows that petitioner worked as before with the university ever since 2012 and the arrangement of outsourcing was never notified to him as there is no written document establishing that he was made to work with M/s Shimla Cleanways and similarly when on 18-7-2013 petitioner was working with the university respondent No. 3 did not issue any letter to petitioner to work with him or that he was on the roll of respondent No. 3. Admittedly, petitioner had worked 31st March, 2104 as per mandays chart with university and while cross-examining petitioner as PW1, Id. Counsel for respondent Nos. 1 to 2 did not put a specific question that petitioner was appointed by M/s Shimla Cleanways who has denied that he worked under M/s Shimla Cleanways besides shown ignorance if M/s Shimla Cleanways had been engaged by respondents No. 1 and 2 besides stated that field staff of university used to pay wages and even the attendance was being marked by them. Significantly, petitioner admitted that whatever work was assigned by university petitioner performed the same. Even cross-examination of petitioner by respondent No. 3 reveal that petitioner had been engaged by university besides supervision was also conducted by field staff of university. He has admitted that M/s Shimla Cleanways did not give any appointment letter when cross-examined by Id. counsel for respondent No. 3. Thus, from evidence on record led by respondents it is not established that petitioner had been transferred in the manner projected by respondent No. 1 who has been held to be principal employer of petitioner and the petitioner would be liable to be absorbed on rolls of respondent Nos. 1 and 2 and not on rolls of respondent No. 3 who was merely contractor and even if respondent No. 3 *i.e.* contractor had been engaged by respondents No.1 and 2, the engagement manifestly appear to be sham transaction as practically respondents No. 1 and 2 had complete control over working of petitioner as has been held in **2015 LLR 580**. In another judgment titled as **Mannu Khan Vs. Union of India** reported in **1989 (2) SCC 99**, the Hon'ble Apex Court has regularized contract labourers of cleaning catering establishment and pantry cars in Western Railways. It also needs to be pointed out that none of the respondents had obtained licence under Contract Labour (Regulations & Abolition) Act, 1970 as there is no evidence to this effect adduced by respondents and in such like situation, respondents No. 1 and 2 who had engaged respondent No. 3 to provide unskilled labourers are held to be

principal employers of petitioner. Accordingly, when respondent No. 3 was engaged to provide labourers who was not registered under Contract Labour (Regulations & Abolition) Act, 1970, he cannot be stated to be registered contractor or principal employer as he was primarily working as contractor and engaged labourers for principal employers as stated above. Accordingly, no relief can be granted to petitioner against respondent No. 3 as respondents 1 and 2 are held to be principal employers of petitioner as stated above.

36. In view of foregoing discussions, it is held that the petitioner despite being contractual labourer would be entitled to be regularized as he had been working intermittently when work was not provided to him whereas other juniors shown namely Bhim Dutt, Kamla Devi and Saroj Bala who joined after him had been given sufficient work as reflected in seniority list Ex. P4 and P5 and thus intermittent breaks are also held to be deliberate and during intermittent break present petitioner he shall be deemed to be in continuous service from date of his initial appointment till was illegally terminated without issuance of one month's notice or compensation in lieu thereof. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents No. 1 & 2 in giving time to time break and finally terminating on 2012 and 1-4-2014 are improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 5 :

37. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 6 :

38. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of 'industry' envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner.

Issue No.7:

39. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and

applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Issues No. 8 & 9 :

41. Both these issues were not pressed by Id. Counsel for respondents at the time of arguments which are decided unpressed in favour of petitioner and against respondents.

Relief :

42. As sequel to my findings on foregoing issues, the claim petition is partly allowed against respondents No. 1 and 2 who are directed to re-engage the petitioner forthwith. It is further held that petitioner shall be in continuous uninterrupted service with the respondents No. 1 and 2 from the date of his initial engagement in the year 2012 and that the breaks given by the respondents No. 1 and 2 during this period being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner whose seniority shall be reckoned from his initial date of engagement besides, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. However, claim petition as against M/s Shimla Cleanways (Contractor) respondent No. 3 is hereby dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

43. The reference is answered in the aforesaid terms.

44. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

45. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 07/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Suresh Kumar s/o Late Shri Kuldeep Chand, r/o Village Neri, P.O. Khagga, Tehsil & District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Suresh Kumar s/o Late Shri Kuldeep Chand, r/o Village Neri, P.O. Khagga, Tehsil & District Hamirpur, H.P. *w.e.f.* 12-01-2010 to 31-12-2012 and finally *w.e.f.* 01-01-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 16-12-2014, the name of employer no. (i) *may be read as* “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” *instead of* “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2010 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 31-12-2012. Averments made in the claim petition further revealed that from 2012 to 31-12-2012, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 31st December, 2012. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 1-1-2013 along-with other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked alongwith petitioner on muster-roll and performed same duties. It is alleged that after terminating service of petitioner and other co workmen, respondents had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No. 1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No.1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of “unfair labour practice” as defined in Vth

Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No.1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh *Vs.* Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 1-1-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2010 to 31-12-2012 till final termination on 1-1-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2010 to 31-12-2012 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 1-1-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal

labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI-130-62 as is evident from letter No. UHF/IBES/HGI-130-62/1055-71 dated 3-10-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and *ad hoc* projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 3-10-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copies of letters dated 17-5-2013, 16-5-2013, 4-5-2013, 10-12-2012, 22-4-2013 Ex. PW1/D to Ex. PW1/H respectively, copy of complaint Ex. PW1/I, copy of letter dated 13-2-2013 Ex. PW1/J, copy of letter dated 27-1-2014 Ex. PW1/K, copy of notification dated 30-4-2012 Ex. PW1/L, copy of CWP No. 4991/2012 Ex. PW1/M, copy of Award dated 24-8-2012 Ex. PW1/N and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P. C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C,

copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P-1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P-6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, ld. counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of ld. Counsel for respondents.

9. I have heard ld. Authorized Representative representing petitioner and ld. counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-05-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 12-1-2010 to 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of petitioner *w.e.f.* 01-01-2013 is/was improper and unjustified? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR*.

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

<i>Issue No. 3 :</i>	Discussed
<i>Issue No. 4 :</i>	No
<i>Issue No. 5 :</i>	No
<i>Issue No. 6 :</i>	Redundant
<i>Issue No. 7 :</i>	No
<i>Relief :</i>	Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2010 initially for a period of 89 days and thereafter with intermittent breaks several times till 2012 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in

service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2010 who continued to work with respondents till 31-12-2012 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

"Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulour employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts qua number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2010 to 31-12-2012 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2010 relating to petitioner which showed that petitioner had worked under project HGI-130-62 & HMM022-62 & HMM-36-62 from 12-1-2010 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year

envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No. 16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No. 15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 11 and had joined on 12-1-2010 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 12-1-2010 till 31-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 12 times from 2010 to 2012 in project HGI-130-62, HMM-022-62 & HMM-36-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No. 15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2010. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim qua deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 31-12-2012. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to

respondents which tentamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2010 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor. Ld. counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/M of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of “retrenchment” and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“...12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the

workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N.S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this subclause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them**. Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide**. An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See *H.D. Singh Vs. Reserve Bank of India*. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen i.e. first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression “retrenchment”.** **The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial

Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abruptly engaging labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2010 to 31-12-2012 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/N passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/N. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/N above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 36 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 1-1-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4:

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, Ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of 'industry' envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues no.4 and 6 are the same, as such in view of findings of issue no.4 as stated above, issue no.6 has become redundant.

Issue No. 5:

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No.7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing cum Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2010 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 16/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Sanjay Mohammad s/o Shri Liyakat Ali, r/o Village Neri, P.O. Khaggal, Tehsil & District Hamirpur, H.P.*Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sanjay Mohammad s/o Shri Liyakat Ali, r/o Village Neri, P.O. Khaggal, Tehsil & District Hamirpur, H.P. during year 2008 to year 2012 thereafter reengagement *w.e.f.* 13-03-2013 to 22-04-2013 and final termination *w.e.f.* 23-4-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 01-01-2015, the name of employer no. (i) *may be read as* “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” *instead of* “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No.1 in the year 2008 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 22nd April, 2013. Averments made in the claim petition further revealed that from 2008 to 2013, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 22nd April, 2013. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B

of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No.1 on 23-4-2013 along-with other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked along with petitioner on muster-roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No.1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No.1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent no.1 fell under the definition of "unfair labour practice" as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No.129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking

permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh Vs. Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 23-4-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2009 to 2013 till final termination on 23-4-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2008 to 22-4-2013 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 23-4-2013 with direction to the respondents to reinstate petitioner forthwith along-with back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HMM-022-62 as is evident from letter No. UHF/RHFRS/HMM-022-62/1401-4 dated 15-10-2008 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and *adhoc* projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is

alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copy of judgment dated 20-11-2014 Ex. PW1/B, application dated 4-5-2013 regarding representation for regularization, seniority and against the fictional breaks Ex. PW1/C, copy of notification dated 30-4-2013 Ex. PW1/D, copy of complaint letter dated 16-5-2013 Ex. PW1/E, copy of reply of demand notice dated 3-7-2013 Ex. PW1/F copy of seniority list of the contractual labour Ex. PW1/G, copy of letter dated 28-7-2008 Ex. PW1/H, copy of letter dated 13-3-2013 Ex. PW1/I, copy of letter dated 3-1-2012 Ex. PW1/J, copy of representation dated 10-12-2012 Ex. PW1/K, copy of letter dated 22-4-2013 Ex. PW1/L, copy of complaint Ex. PW1/M, copy of letter dated 13-2-2013 Ex. PW1/N, copy of letter dated 27-1-2014 Ex. PW1/O, copy of Award dated 24-8-2012 Ex. PW1/P, copy of daily paid workers dated 30-4-2010 Ex. P1 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P 6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 2008 to year 2012 is/was improper and unjustified as alleged? . .*OPP*.
2. Whether the petitioner was reengaged from 13-3-2013 to 22-4-2013 and final termination of services of petitioner *w.e.f.* 23-4-2013 is/was improper and unjustified? . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . .*OPR*.
7. Whether the claim petition is time barred by limitation as alleged? . .*OPR*.

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2008 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of atleast 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2008 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally along-with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on

contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

"Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be

provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2008 to 2013 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2009 relating to petitioner which showed that petitioner had worked under project HMM-023-62 from 28-7-2008 to 8-12-2009 for 89 days and thereafter with several intermittent breaks till 20-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No. 16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No. 15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 6 and had joined on 28-7-2008 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 28-7-2008 till 20-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 18 times from 2008 to 2013 in project HMM 023-62 & HGI-218-62. If Tara Chand and Asha Devi could be given work for

more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2008. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2008 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/B of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No.4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents

in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of "retrenchment" and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

"...12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

"The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**'. Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub-cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them**. Terminations which are included in it are those which are

brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bonafide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker...."**

Para No. 17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act.** Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which**

advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment. In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2009 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that

petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/P passed in Reference No.154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/P. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/P above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 35 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 23-4-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4:

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being

aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2007 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled

to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	09/2015
Date of Institution :	13-01-2015
Date of decision :	24-4-2018

Shri Joginder Singh s/o Shri Prem Singh, r/o Village Chunhal, P.O. Jhaniari Devi, Tehsil & District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. N.L. Kaundal, AR
	Sh. Vijay Kaundal, Adv.
For the Respondent(s) :	Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Joginder Singh s/o Shri Prem Singh, r/o Village Chunhal, P.O. Jhaniari Devi, Tehsil & District Hamirpur, H.P. *w.e.f.*

08-7-2009 to 31-12-2012 and finally *w.e.f.* 01-01-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

"In partial modification of this Department's Notification of even number dated 19-12-2014, the name of employer no. (i) *may be read as* "the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P." *instead of* "the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.", which was inadvertently recorded in the said notification."

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2009 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 31st December, 2012. Averments made in the claim petition further revealed that from 2009 to 2012, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 31st December, 2012. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other coworkers so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 1-1-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked alongwith petitioner on muster-roll and performed same duties. It is alleged that after terminating service of petitioner and other co workmen, respondents had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent no.1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal

Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanwayas, Sahibu Niwas, New Shimla, H.P and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of “unfair labour practice” as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for re-engagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh *V/s.* Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H. P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to re-engage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 1-1-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2009 to 2013 till final termination on 1-1-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2009 to 31-12-2012 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 1-1-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI130-62 as is evident from letter No. UHF/IBES/HGI-130-62/1055-71 dated 3-10-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and *ad hoc* projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copies of letters dated 3-1-2012, 8-7-2009, 8-1-2010, 2-8-2010, 20-5-2011, 12-1-2012, 3-10-2012 Ex.

PW1/B to Ex. PW1/H respectively, copy of mandays chart Ex. PW1/I, copy of letter dated 4-5-2013 Ex. PW1/J, copy of CWP No. 4991/2012 Ex. PW1/K, copy of notification dated 30-4-2012 Ex. PW1/L, copy of letter dated 16-5-2013 Ex. PW1/M, copy of representation dated 10-12-2012 Ex. PW1/N, copy of letter dated 22-4-2013 Ex. PW1/O, copy of complaint Ex. PW1/P, copy of letter dated 13-2-2013 Ex. PW1/Q, copy of letter dated 27-1-2014 Ex. PW1/R, copy of Award dated 24-8-2012 Ex. PW1/S and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P. C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P 6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, ld. counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed vide separate statement of ld. Counsel for respondents

9. I have heard ld. Authorized Representative representing petitioner and ld. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the years 8-7-2009 to 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of petitioner *w.e.f.* 1-1-2013 is/was improper and unjustified? . . .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR.*
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR.*
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR.*

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2009 initially for a period of 89 days and thereafter with intermittent breaks several times till 2012 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in

research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2009 who continued to work with respondents till 31-12-2012 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (supra) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984)

case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

"Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2009 to 2012 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. R10 the mandays on fixed wages *w.e.f.* 2009 relating to petitioner which showed that petitioner had worked under project HMM 036-62 from 8-7-2009 to 19-4-2011 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete

240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at Serial No.15 in the seniority list. Similarly, Asha Devi figuring at serial No. 16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No.15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No.8 and had joined on 8-7-2009 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 8-7-2009 till 31-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 11 times from 2009 to 2012 in project HMM 36-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2009. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y. S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent

breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2009 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/K of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P. C. Sharma, Director Dean College of Horticulture respondent No.1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of "retrenchment" and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of**

retrenchment. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that Section 2(oo) (bb) is in the nature of an exception to Section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced.** Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub-cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See *H.D. Singh Vs. Reserve Bank of India*. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary

on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited *Vs.* Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression “retrenchment”.** The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed. Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour

practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abruptly engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2009 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts qua engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/S passed in Reference No.154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/S. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/S above-named Mahinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young

person ageing about 35 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No. 1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 1-1-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4:

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, Ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to

put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2009 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 62/2015
Date of Institution : 23-02-2015
Date of decision : 24-04-2018

Shri Dev Raj s/o Shri Gian Chand, r/o Village Mandu, P.O. Lahar, Tehsil Nadaun, District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dev Raj s/o Shri Gian Chand, r/o Village Mandu, P.O. Lahar, Tehsil Nadaun, District Hamirpur, H.P. during year 2012 and finally *w.e.f.* 01-01-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y. S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 28-01-2015, the name of employer No (i) *may be read as* “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” *instead of* “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2012 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 31-12-2012. Averments made in the claim petition further revealed that from 2012 to 31-12-2012, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 31st December, 2012. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not

complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 1-1-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked alongwith petitioner on muster-roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s. Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No. 1 had renewed contract with contractor above named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of "unfair labour practice" as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for re-engagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble

High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh Vs. Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 1-1-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2012 to 31-12-2012 till final termination on 1-1-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2012 to 31-12-2012 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 1-1-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI-130-62 as is evident from letter No.UHF/IBES/HGI-130-62/1055-1071 dated 3-10-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and adhoc projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due

to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, copy of letter dated 3-1-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of letter dated 4-5-2013 Ex. PW1/D, copy of letter dated 17-5-2013 Ex. PW1/E, Copy of letter dated 16-5-2012 Ex. PW1/F, copy of letter dated 30-4-2013 Ex. PW1/G, copy of letter dated 10-12-2012 Ex. PW1/H, copy of letter dated 13-2-2013 Ex. PW1/I, copy of letter dated 20-4-2013 Ex. PW1/J, copy of complaint Ex. PW1/K, copy of letter dated 27-1-2014 Ex. PW1/L, copy of CWP No. 4991/2012 Ex. PW1/M, copy of Award dated 24-8-2012 Ex. PW1/N and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P 6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents.

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-05-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 2012 is/was improper and unjustified as alleged? . .*OPP*.
2. Whether final termination of services of petitioner *w.e.f.* 01-01-2013 is/was improper and unjustified? . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . .*OPR*.
7. Whether the claim petition is time barred by limitation as alleged? . .*OPR*.

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2012 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident

from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of atleast 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2012 who continued to work with respondents till 31-12-2012 when service of petitioner had been terminated finally along-with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted by respondents during period of employment of petitioner when there were sufficient funds and

work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire....”

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus,

intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2012 to 31-12-2012 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2009 relating to petitioner which showed that petitioner had worked under project HMS-218-62 etc. from 8-7-2009 to 19-8-2011 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No.15 in the seniority list. Similarly, Asha Devi figuring at serial No. 16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No. 15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No.13 and had joined on 8-7-2009 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 8-7-2009 till 31-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 12 times from 2009 to 2013 in project HMS-218-62 and HGI 130- 62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No. 15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2009. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 31-12-2012. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2009 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/M of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent no.1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon

petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in crossexamination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of "retrenchment" and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment.** In the case before the Honble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

"....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

"The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this subclause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of

duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh v. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker...."**

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni, (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act.** Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of N. Sundaramoney's case relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to**

accept all such conditions even unconscionable conditions of service in the contract of employment. In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2009 to 31-12-2012 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts qua engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/N passed in Reference No.154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/N. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/N above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 36 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 1-1-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4:

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, Ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5:

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7:

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2009 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 08/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Madan Lal s/o Shri Jondu Ram, r/o Village Badihina, P.O. Amroh, Tehsil Nadaun, District Hamirpur, H.P. *. Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. *. Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Madan Lal s/o Shri Jondu Ram, r/o Village Badihina, P.O. Amroh, Tehsil Nadaun, District Hamirpur, H.P. *w.e.f.* 16-01-2008 to 31-12-2012 thereafter re-engagement from 14-03-2013 to 22-4-2013 and final termination *w.e.f.* 23-4-2013 by (i) the Director, Institute of Biotechnology & Environment Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y. S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act,

1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

"In partial modification of this Department's Notification of even number dated 16-12-2014, the name of employer No (i) *may be read as* "the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P." *instead of* "the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.", which was inadvertently recorded in the said notification."

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2008 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 22nd April, 2013. Averments made in the claim petition further revealed that from 2004 to 2013, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 22nd April, 2013. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 23-4-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked along-with petitioner on muster roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s. Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No. 1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner

and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of “unfair labour practice” as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court vide order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh Vs. Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 23-4-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2008 to 2013 till final termination on 23-4-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2008 to 22-4-2013 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 22-4-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was

formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project/scheme code No. HPL-038-62 as is evident from letter No. UHF/RHFRS/1-7/-1557 dated 15-1-2008 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and *ad hoc* projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copy of judgment dated 20-11-2014 Ex. PW1/B, copy of application dated 4-5-2013 Ex. PW1/C, copy of notification dated 30-4-2013 Ex. PW1/D, copy of letter dated 16-5-2013 Ex. PW1/E, copy of reply to the demand notice dated 3-7-2013 Ex. PW1/F, copy of seniority list Ex. PW1/G, copies of letters dated 3-10-2012, 14-2-2013, 13-3-2013, 30-4-2008, 30-4-2008 Ex. PW1/H to Ex. PW1/L respectively, copy of representation dated 10-12-2012 Ex. PW1/M, copy of letter dated 22-4-2013 Ex. PW1/N, copy of complaint letter Ex. PW1/O, copy of letter dated 13-2-2013 Ex. PW1/P, copy

of letter dated 27-1-2014 Ex. PW1/Q copy of Award dated 24-8-2012 Ex. PW1/R and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P 4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P-6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P 9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 16-1-2008 to 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether the petitioner was reengaged from 14-03-2013 to 22-4-2013 and final termination of services of petitioner *w.e.f.* 23-4-2013 is/was improper and unjustified? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR*.

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief: Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2008 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects more so when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of atleast 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2 (oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2008 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is

found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire....”

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts qua number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2008 to 2013 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2008 relating to petitioner which showed that petitioner had worked under project HMM 036-62 from 16-1-2008 to 30-9-2011 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No.16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No.15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 7 and had joined on 16-1-2008 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 16-1-2008 till 31-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 14 times from 2008 to 2013 in project HMM-036-62 & HMS-218-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2008. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim qua deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2004 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/B of Hon'ble High Court of H.P. in which present petitioner along with 13 others had filed CWP No.4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner along-with 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of “retrenchment” and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N.S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them**. Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide**. An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See *H.D. Singh Vs. Reserve Bank of India*. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No. 17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in *Haryana State Electronics Development Corporation Limited Vs. Mamni* (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression “retrenchment”.** The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed. Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2008 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts qua engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/R passed in Reference No.154/2012 titled as Mohinder Singh versus Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/R. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/R above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 36 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No. 1 and 2 are answered in affirmative holding that act of respondents

in giving time to time break and finally terminating on 23-4-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No.4:

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-**

cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2008 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 06/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Vipin Kumar s/o Shri Chamel Singh, r/o V.P.O. Rangas, Tehsil Nadaun, District Hamirpur, H.P. . .Petitioner.

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P. . .Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Vipin Kumar s/o Shri Chamel Singh, r/o V.P.O. Rangas, Tehsil Nadaun, District Hamirpur, H.P. *w.e.f.* 21-05-2010 to 31-12-2012 and finally *w.e.f.* 01-01-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 16-12 2014, the name of employer No (i) *may be read as* “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” *instead of* “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No.1 in the year 2010 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 31st December, 2012. Averments made in the claim petition further revealed that from 2010 to 2012, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 31st December, 2012. It is further alleged that respondents had given fictional

breaks of 89 days in two spells to the petitioner and other coworkers so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 1-1-2013 along-with other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked alongwith petitioner on muster-roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s. Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No.1 had renewed contract with contractor above named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of "unfair labour practice" as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2014 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily

engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh *Vs.* Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 1-1-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2009 to 2012 till final termination on 1-1-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2010 to 31-12-2012 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 1-1-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI130-62 as is evident from letter No. UHF/IBES/HGI-130-62/1055-71 dated 3-10-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No.827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and adhoc projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-

workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copy of judgment dated 20-11-2014 Ex. PW1/B, copy of application dated 4-5-2013 Ex. PW1/C, copy of notification dated 30-4-2013 Ex. PW1/D, copy of letter dated 16-5-2013 Ex. PW1/E, copy of letter dated 15-5-2010 Ex. PW1/F, copy of reply to the demand notice dated 17-5-2013 Ex. PW1/G, copy of mandays chart Ex. PW1/H, copy of letter dated 3-1-2012 Ex. PW1/I, copy of representation dated 10-12-2012 Ex. PW1/J, copy of letter dated 22-4-2013 Ex. PW1/K, copy of complaint Ex. PW1/L, copy of letter dated 13-2-2013 Ex. PW1/M, copy of letter dated 27-1-2014 Ex. PW1/N, copy of Award dated 24-8-2012 Ex. PW1/O, copy of mandays chart Ex. PW1/P and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P 4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P-6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel. for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during *w.e.f.* 21-5-2010 to 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of petitioner *w.e.f.* 1-1-2013 is/was improper and unjustified? . . .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR.*
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR.*
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR.*

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2010 initially for a period of 89 days and thereafter with intermittent breaks several times till 2012 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2010 who continued to work with respondents till 31-12-2012 when service of petitioner had been terminated finally alongwith 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer

on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

"Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits.** It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had

sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2010 to 2012 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. R10 the mandays on fixed wages *w.e.f.* 2010 relating to petitioner which showed that petitioner had worked under project HMS 218-62 from 21-5-2010 to 17-8-2010 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No.15 in the seniority list. Similarly, Asha Devi figuring at serial No.16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No. 15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 9 and had joined on 21-5-2010 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 21-5-2010 till 31-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 11 times from 2010 to 2012 in project HMS-218-62 & HMS-292-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or

compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2010. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2009 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/B of Hon'ble High Court of H.P. in which present petitioner alongwith 13 other had filed CWP No.4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents

that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of "retrenchment" and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

"...12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

"The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them**. Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time

stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker...."**

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act.** Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was**

observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment. In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(o) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(o) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2009 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts qua engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that

petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/O passed in Reference No.154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/O. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/O above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my ld. predecessor-in office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 28 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 1-1-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4 :

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being

aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors., AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum- Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2010 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled

to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 17/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Joginder Singh s/o Shri Puran Chand, r/o Village Neri, P.O. Khaggal, Tehsil & District Hamirpur, H.P. *. Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P. *. Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Joginder Singh s/o Shri Puran Chand, r/o Village Neri, P.O. Khaggal, Tehsil & District Hamirpur, H.P. w.e.f. 08-07-2009

to 31-12-2012 and thereafter re-engagement *w.e.f.* 14-03-2013 to 22-04-2013 and final termination *w.e.f.* 23-04-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

"In partial modification of this Department's Notification of even number dated 01-01-2015, the name of employer No (i) *may be read as* "the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P." *instead of* "the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.", which was inadvertently recorded in the said notification."

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2009 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 22nd April, 2013. Averments made in the claim petition further revealed that from 2009 to 2013, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 22nd April, 2013. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 23-4-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked alongwith petitioner on muster-roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s. Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No. 1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal

Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanwayas, Sahibu Niwas, New Shimla, H.P. and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of “unfair labour practice” as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for re-engagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh *Vs.* Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to re-engage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 23-4-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2009 to 2013 till final termination on 23-4-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2009 to 22-4-2013 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 22-4-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI130-62 as is evident from letter No.UHF/IBES/HGI-130-62/1055-71 dated 3-10-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and adhoc projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copy of judgment dated 20-11-2014 Ex. PW1/B, application dated 4-5-2013 regarding representation for

regularization, seniority and against the fictional breaks Ex. PW1/C copy of notification dated 30-4-2013 Ex. PW1/D, copy of complaint letter dated 16-5-2013 Ex. PW1/E, copy of reply of demand notice dated 3-7-2013 Ex. PW1/F copy of seniority list of the contractual labour Ex. PW1/G, copy of letter dated 3-10-2012 Ex. PW1/H, letter dated 7-7-2009 addressed to Shri Rajeev Kumar Ex. PW1/I, letter dated 13-3-2013 Ex. PW1/J, letter dated 3-1-2012 Ex. PW1/K, copy of representation dated 10-12-2012 Ex. PW1/L, complaint dated 22-4-2013 addressed to Deputy Commissioner, Hamirpur Ex. PW1/M, complaint dated nil Ex. PW1/N, copy of representation dated 13-2-2013 Ex. PW1/O, letter dated 27-1-2014 regarding reinstatement of Sh. Budh Ram as daily paid labourer Ex. PW1/P, copy of Award dated 24-8-2012 passed by this Court Ex. PW1/Q and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P 6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents.

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-05-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 8-7-2009 to 31-12-2012 is/was improper and unjustified as alleged? . . .*OPP.*
2. Whether the petitioner was re-engaged from 14-3-2013 to 22-4-2013 and final termination of services of petitioner *w.e.f.* 23-4-2013 is/was improper and unjustified? . . .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR.*
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . . *OPR.*
7. Whether the claim petition is time barred by limitation as alleged? . . . *OPR.*

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2009 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2009 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally along-with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case,

services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-clause (bb) (oo) of Section 2 and relevant para is reproduced below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."**

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts qua number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2009 to 2013 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2009 relating to petitioner which showed that petitioner had worked under project FCR-034-62, HMM-022-62 from 1-3-2007 to 31-12-2010 for 89 days and thereafter with several intermittent breaks till 31-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No.16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No.15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 3 and had joined on 1-3-2007 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 1-3-2007 till 31-12-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 12 times from 2007 to 2013 in project FCR-034-62, HMM-022-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2007. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y. S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of

appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tentamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2007 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/B of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No.1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of “retrenchment” and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the ld.

Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment.** In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**". Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bonafide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That

would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bonafide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen i.e. first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression “retrenchment”.** The act of respondents of engaging petitioner giving fictional

breaks was not bonafide and reinstatement of petitioner-workman was allowed. Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2009 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/Q passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/Q. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/Q above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth

Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 43 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No. 1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 23-4-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4:

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5:

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the

Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2007 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 14/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Rajesh Kumar s/o Shri Kashmir Singh, r/o Village Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y. S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Rajesh Kumar, s/o Shri Kashmir Singh, r/o Village Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. during year 2004 to 22-04 2013 and finally *w.e.f.* 23-4-2013 by (i) the Director, Institute of Biotechnology & Environment Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P. (ii) the Registrar, Dr. Y. S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 26-12-2014, the name of employer No (i) *may be read as* “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” *instead of* “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No.1 in the year 2004 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 22nd April, 2013. Averments made in the claim petition further revealed that from 2004 to 2013, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 22nd April, 2013. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No.1 on 23-4-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked along with petitioner on muster roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s. Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. vide letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No.1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No.1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of "unfair labour practice" as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a

complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/ 2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh *Vs.* Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 23-4-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2004 to 2013 till final termination on 23-4-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2004 to 22-4-2013 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 22-4-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI-130-62 as is evident from letter No.UHF/RHFRS/HGI-130-62/626-34 dated 1-7-2011 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job.

It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and adhoc projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copy of judgment dated 20-11-2014 Ex. PW1/B, copy of application dated 4-5-2013 Ex. PW1/C, copy of notification dated 30-4-2013 Ex. PW1/D, copy of letter dated 16-5-2013 Ex. PW1/E, copy of reply to the demand notice dated 3-7-2013 Ex. PW1/F, copy of seniority list Ex. PW1/G, copies of letters dated 22-1-2009, 11-1-2010, 5-2-2011, 14-3-2013, 13-3-2013, 22-4-2013 Ex. PW1/H to Ex. PW1/M respectively, copy of experience certificate Ex. PW1/N, copy of CWP No. 4991/2012 dated 20-11-2014 Ex. PW1/O, copy of Award dated 24-8-2012 Ex. PW1/P, copy of letter dated 27-1-2014 Ex. PW1/Q, copy of complaint letter Ex. PW1/R, copy of letter dated 22-4-2013 Ex. PW1/S, copy of representation dated 10-12-2012 Ex. PW1/T, copy of letter dated 13-2-2013 Ex. PW1/U and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of

daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P-6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents.

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 2004 to 22-04-2013 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of petitioner *w.e.f.* 23-4-2013 is/was improper and unjustified? . . .*OPP*.
3. If issue No.1 or issue No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR*.

Relief:

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief: Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2004 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects more so when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner *qua* termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster-roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2004 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally along-with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbair Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub Clause (bb) (oo) of Section 2 and relevant para is reproduced below:

"Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The**

contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire....”

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2004 to 2013 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2004 relating to petitioner which showed that petitioner had worked under project FCR-002-20 from 21-9-2004 to 11-4-2010 for 89 days and thereafter with several intermittent breaks till 20-8-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No. 16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No.15 and 16, it has been contended that there was sufficient work and funds available with the

respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No. 4 and had joined on 21-9-2004 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 1-3-2004 till 20-8-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 28 times from 2004 to 2013 in project FCR-002-20, FPL-033-62 etc.. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No.15 and 16 names of Tara Chand and Asha Devi existed but at serial nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2004. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim qua deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tentamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2004 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20.11.2014 Ex. PW1/B of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No.4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall**

be engaged without first affording the work to the petitioners". In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No.1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in cross-examination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of "retrenchment" and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

"...12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

"The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N.S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**. Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners

claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh *Vs.* Reserve Bank of India (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker...."**

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited *Vs.* Mamni, (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bonafide but adopted to defeat the object of the Act.** Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State**

Bank of India Vs. N. Sundaramoney reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's** case relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the term of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2004 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents

which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts *qua* engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/P passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/P. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/P above-named Mahinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 32 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No.1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 23-4-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4 :

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, Ld. counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since

issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief :

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2004 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	44/2015
Date of Institution :	21-02-2015
Date of decision :	24-4-2018

Shri Subhash Chand s/o Shri Penu Ram, r/o Village Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. *.Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P. *. Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. N.L. Kaundal, AR
	Sh. Vijay Kaundal, Adv.
For the Respondent(s) :	Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Subhash Chand, s/o Shri Penu Ram, r/o Village Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. during year 2007 to 22-04 2013 and finally *w.e.f.* 23-04-2013 by (i) the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri District Hamirpur, H.P., (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 23-1-2015, the name of employer no (i) may be read as “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” instead of “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2007 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 22nd April, 2013. Averments made in the claim petition further revealed that from 2007 to 2013, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 22nd April, 2013. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 23-4-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked alongwith petitioner on muster roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H. P. *vide* letter No. 827-76 dated 30th April, 2013 to

outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent No. 1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of “unfair labour practice” as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner alongwith other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No.1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/ 2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh Vs. Registrar, Dr. Y. S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to reengage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 23-4-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2007 to 2013 till final

termination on 23-4-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2007 to 22-4-2013 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 22-4-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No.HMS-292-62/HGI-130-62 as is evident from letter No.UHF/IBES/HMS-292/62-2080-95 dated 3-1-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and *ad hoc* projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some

workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A, copy of letter dated 3-1-2012 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of letter dated 16-5-2013 Ex. PW1/D, copy of letter dated 4-5-2013 Ex. PW1/E, copy of letter dated 10-12-2012 Ex. PW1/F, copy of letter dated 22-4-2013 Ex. PW1/G, copy of complaint Ex. PW1/H, copy of letter dated 13-2-2013 Ex. PW1/I, copy of letter dated 27-1-2014 Ex. PW1/J, copy of notification dated 30-4-2013 Ex. PW1/K, copy of CWP No. 4991/12 dated 20-11-2014 Ex. PW1/L, copy of Award dated 24-8-2012 Ex. PW1/N and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves) Ex. P1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P-6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents.

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-08-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 2007 to 22-04-2013 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of petitioner *w.e.f.* 23-4-2013 is/was improper and unjustified? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.

6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . . *OPR.*
7. Whether the claim petition is time barred by limitation as alleged? . . . *OPR.*

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2007 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner qua termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo) (bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2007 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally alongwith 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra, and Anr. versus Presiding Officer, Industrial Tribunal-*cum*-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case,

services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-clause (bb) (oo) of Section 2 and relevant para is reproduce below:

Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."**

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P.C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2007 to 2013 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. P10 the mandays on fixed wages *w.e.f.* 2007 relating to petitioner which showed that petitioner had worked under project FCR-034-62, FPL-033-62, HNP-038-62, HMM-022-62 from 20-4-2010 for 89 days and thereafter with several intermittent breaks till 20-8-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No. 15 in the seniority list. Similarly, Asha Devi figuring at serial No.16 in seniority list Ex. R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No. 15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial No.4 and had joined on 1-3-2007 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 1-3-2007 till 20-8-2012 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 28 times from 2007 to 2013 in project FCR-034-62, FPL-033-62, HNP-038-62, HMM-022-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No. 15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2007. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y.S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of

appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tentamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2009 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex. PW1/L of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for reengagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P. C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in crossexamination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of “retrenchment” and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Id.

Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment.** In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**. Since this wide interpretation resulted in extending benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub-cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bonafide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That

would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker....**”

Para No.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

“17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act**. Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947.....”

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. It was observed that the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to be employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression “retrenchment”.** The act of respondents of engaging petitioner giving fictional

breaks was not bonafide and reinstatement of petitioner-workman was allowed. Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abruptly engaging labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2007 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts qua engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/M passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, Ld. Counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/M. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/M above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents *qua* similarly situated workmen. In the said judgment also, my Ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth

Schedule appended under the Act. In so far claim of petitioner *qua* back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 40 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No. 1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 23-4-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4 :

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (**2007 LHLJ 903**). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the

Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2007 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 15/2015

Date of Institution : 13-01-2015

Date of decision : 24-4-2018

Shri Rajeev Kumar s/o Shri Mahant Ram, r/o Village Badhiana, P.O. Amroh, Tehsil &
District Hamirpur, H.P. . *Petitioner.*

Versus

1. The Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.
2. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan H.P. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Karan Pathania, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Rajeev Kumar, s/o Shri Mahant Ram, r/o Village Badhiana, P.O. Amroh, Tehsil & District Hamirpur, H.P. during year 2009 to 22-04-2013 and finally *w.e.f.* 23-04-2013 by (i) the Director, Institute of Biotechnology & Environment Sciences, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, District Hamirpur, H.P., (ii) the Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, District Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 3rd February, 2017 was received from the appropriate government which reads as under:

“In partial modification of this Department's Notification of even number dated 26-12- 2014, the name of employer no (i) may be read as “the Dean, College of Horticulture and Forestry Neri, District Hamirpur, H.P.” instead of “the Director, Institute of Biotechnology & Environmental Sciences, Dr. Y. S. Parmar University of Horticulture & Forestry, Neri, District Hamipur, H.P.”, which was inadvertently recorded in the said notification.”

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition reveal that petitioner had been engaged as unskilled labourer by respondent No. 1 in the year 2009 with prior approval of respondent No. 2 who continued to work uninterruptedly with the respondents upto 22nd April, 2013. Averments made in the claim petition further revealed that from 2009 to 2013, petitioner had been engaged for 89 days in first spell and after completion of 89 days, he had been given fictional break in his service as some other group of workmen had been engaged for second spell of 89 days and when the second spell of workers had completed after 89 days, petitioner had been engaged again for 89 days and such practice of engaging and disengaging by giving fictional breaks to the petitioner continued upto 22nd April, 2013. It is further alleged that respondents had given fictional breaks of 89 days in two spells to the petitioner and other co-workmen so that they did not complete 240 days in each calendar year for the purpose of counting continuous service envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'Act' for brevity). The grievance of petitioner remains that his service had been finally terminated by respondent No. 1 on 23-4-2013 alongwith other co-workmen without complying with mandatory provisions of Act as neither any show cause notice had been issued nor charge-sheet had been raised for any alleged misconduct and at the same time, no inquiry had been conducted against the petitioner besides no retrenchment notice or compensation of one month's pay in lieu of notice period had been given and thus termination order is stated to be illegal, null and void as petitioner had completed 240 days in preceding 12 calendar months from date of termination. It is alleged that while terminating of service of petitioner even principle of 'Last come First go' had not been followed as several junior workmen namely Ishwar Dass and Rajeev Kumar had been retained in service ignoring the rights of petitioner in violation of Section 25-G of Act as above named two workmen had worked along with petitioner on muster roll and performed same duties. It is alleged that after terminating service of petitioner and other co-workmen, respondents had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. *vide* letter No. 827-76 dated 30th April, 2013 to outsource the unskilled labour *w.e.f.* 1-5-2013 to 31-3-2014 for 11 months and after expiry of the above said period, respondent no.1 had renewed contract with contractor above-named for further period of one year and as such the above said contractor had engaged 15 workmen as unskilled labourers on daily rate basis namely Raj Kumar, Arvind Kumar, Premi Devi, Asha Devi, Kanta Devi, Beena Devi, Santosh Kumari, Sunita Devi, Nirmla Devi, Soma Devi, Raj Kumari, Sudesh Kumari, Meena Devi, Santosh Kumari and Sobha Ram who had worked under Shri Rampal Baniyal, Incharge and thus respondents had violated provisions of Section 25-H of Act. It is categorically stated that respondents had sufficient work due to which they had outsourced unskilled labour *w.e.f.* 1-5-2013 to be engaged through M/s Shimla Cleanways, Sahibu Niwas, New Shimla, H.P. and thus it cannot be stated that respondents did not have sufficient work and funds in different projects run by it. It is alleged that the service of petitioner and other co-workmen who had been engaged by the respondents had been terminated with the object to deprive petitioner and other unskilled labourers so that they did not complete 240 days. It is alleged that respondent No. 1 without any instructions from respondent No. 2 had given fictional breaks to petitioner and said act of respondent No. 1 fell under the definition of "unfair labour practice" as defined in Vth Schedule Clause 10 read with Section 25-T and 25-U of the Industrial Disputes Act, 1947. It further transpires from petition that the respondents had engaged regular unskilled Class-IV workers on regular pay scale in Neri I and II who are S/Sh. Chaman Lal, Kishan Chand, Deen, Sanjeev Kumar, Parkash Chand, Yashpal Singh and Mast Ram however 14 workmen including petitioner had been initially engaged on daily rate basis for 89 days in two spells as stated above. It is also alleged that in addition to petitioner and other workers as stated in this para some other workmen had been engaged who were not given any break and thus respondents has also shown favouritism to one set of workers which violated provisions of Clause 9 of Schedule 5th of Industrial Disputes Act. It is alleged that respondents had admitted in the reply filed before the Labour Inspector, Hamirpur that petitioner had been engaged as contractual labourer for 89 days in two spells during calendar year as per the rules framed by university in year 2002 and that initially after working for 89 days, petitioner had been given break. It is alleged that these 14 workmen including petitioner had filed a

complaint of illegal termination before Deputy Commissioner, Hamirpur in pursuance to which Additional Deputy Commissioner, District Hamirpur had written a letter No. 129 dated 16-5-2013 for reengagement of services of retrenched workmen on the basis of order dated 20-11-2004 of Hon'ble High Court of H.P. It is alleged that petitioner along-with other workmen had filed CWP No. 4991/2012 in which Hon'ble High Court *vide* order dated 20-11-2014 in which directions had been given to respondents to not give fictional breaks to the petitioners and if their services on this count already stood dispensed with, then no fresh hand shall be engaged without first offering the work to the petitioners. It is alleged that despite directions *vide* order dated 20-11-2014 respondents had not given offer to petitioner and other co-workmen for appointment in service and contrarily engaged 15 workmen with contractor and thus respondent No. 1 has violated even order of Hon'ble High Court. Moreover, respondent did not file any application before Hon'ble High Court seeking permission in CWP No. 4991/ 2012 to allow respondents to outsource petitioner unskilled contract labour in place of terminated workmen. It further remains the case of the petitioner that in reference 154/2012 decided by this Court on 24-8-2012 titled as Mahinder Singh *Vs.* Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan, H.P. retrenchment of Mahinder Singh dated 1-1-2005 was set aside and respondents were directed to re-engage the petitioner forthwith who was further held entitled to seniority and continuity of service from the date of his illegal termination except back wages. It is alleged that in pursuance to Award dated 24-8-2012 said Mahinder Singh has been continuously working with the respondents till date of filing of present claim petition. Accordingly, alleging respondents to have given fictional breaks from time to time terminating service of petitioner and other co-workmen for 89 days in two spells and finally terminating service of petitioner on 23-4-2013 is illegal, arbitrary and unjustified in violation of mandatory provisions of Act. It is claimed that after termination, petitioner has remained unemployed who was not gainfully employed anywhere from 2013 and thus petitioner claimed to be entitled for full back wages for period of fictional breaks from 2009 to 2013 till final termination on 23-4-2013. Accordingly, petitioner prays for setting aside illegal fictional breaks *w.e.f.* 2009 to 22-4-2013 with direction to the respondents to condone the break period in continuity in service for the purposes of regularization besides has prayed wages for time to time break period. The claimant/petitioner has further prayed for setting aside illegal termination *w.e.f.* 22-4-2013 with direction to the respondents to reinstate petitioner forthwith alongwith back wages, seniority, continuity in service with consequential benefits and litigation costs.

5. Respondents No. 1 and 2 contested claim petition, filed joint reply *inter-alia* taken preliminary objections of maintainability, limitation and jurisdiction. On merits admitted that petitioner had been engaged as contractual labour to do manual work in the experimental fields on seasonal basis but denied that his service had been illegally terminated by the respondents. It is alleged that due to non-availability of funds a policy for the engagement of contractual labour was formulated by the respondent *w.e.f.* 1-1-2002 so as to recognize engagement and avoid additional liability. It is claimed that respondents did not have permanent and perennial nature of experimental field work which required attendance of labourers (during Rabi and Kharif season) as seasonal labourers were employed for a limited period on contract basis to accomplish the field trial work with the object of research trial and their data etc. were not wasted for want of adequate manpower. It is specifically alleged that petitioner had been engaged as contractual labour on a fixed salary for a particular period in different spells as and when work and funds were available under the project code No. HGI130-62 as is evident from letter No.UHF/IBES/HGI-130-62/1055-71 dated 3-10-2012 which postulated that no seniority shall be given to contractual labour and the service of individual will be terminated after the contract was over as envisaged under conditions No. 2 and 8 of appointment letter. The respondents have asserted that petitioner had after understanding terms and conditions accepted the engagement and did not complete 240 days in any of the calendar years. It is alleged by respondents in their reply that as and when work and funds were available under time bound project, service of labour for field work was required for which advertisement was given from time to time but the petitioner did not turn up for facing interviews and seeking job. It is

emphatically denied that junior persons namely Rajeev Kumar and Ishwar Dass had been retained by university rather said Ishwar Dass has been working with the college since 2000. However, the court had given seniority *w.e.f.* 14-11-2005 and thus allegation of petitioner that juniors were retained was stated to be wrong. It is admitted that respondent had entered into contract with M/s Shimla Cleanways, Sahibu Niwas, New Shimla *vide* letter No. 827-76 dated 30-4-2013 but outsource the unskilled labour *w.e.f.* 1-1-2013 onwards and engaged skilled and unskilled labourer through them to carry out the seasonal and *ad hoc* projects work as and when needed and that if petitioner wanted to get engaged for field work with the respondents then petitioner was required to approach the said agency. It is asserted that termination of petitioner including other co-workers outsourcing by respondents had become compulsion of university due to reason that the university was already facing liability of surplus staff including Class-IV. It is alleged that respondents are not in a position to continue the service of labourer including petitioner so as avoid additional financial liability. It is alleged that most of the labourers mentioned in the petition had been engaged on compassionate grounds as per provisions of rules with the prior approval of State Govt. besides maintained that petitioner was engaged on contractual basis for specific terms and conditions and thus he cannot retract from conditions imposed by the respondents. It is alleged that petitioner was engaged from time to time on fixed salary on contractual basis and not on regular basis for a specific period. Accordingly, denying all allegations of petitioner, as contained in claim petition respondents have prayed for dismissal of claim petition.

6. The petitioner filed rejoinder to the join reply filed by respondents, reiterated his stand as maintained in the claim petition. It is also reiterated that workmen mentioned in para No. 6 of the claim petition namely Chaman Lal, Krishan Chand, Jamaldeen, Sanjeev Kumar, Om Prakash, Yashpal Singh and Mast Ram regular workmen who had been working with the petitioner and other co-workmen have since been disengaged. It is denied that respondents had engaged some workmen on compassionate grounds moreover asserted petitioner to be unemployed and not gainfully employed anywhere during time to time termination and from the date of his final termination.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, affidavit of petitioner Ex. PW1/A1, copy of judgment dated 20-11-2014 Ex. PW1/B, application dated 4-5-2013 regarding representation for regularization, seniority and against the fictional breaks Ex. PW1/C copy of notification dated 30-4-2013 Ex. PW1/D, copy of complaint letter dated 16-5-2013 Ex. PW1/E, copy of reply of demand notice dated 3-7-2013 Ex. PW1/F copy of seniority list of the contractual labour Ex. PW1/G, copy of letter dated 3-10-2012 Ex. PW1/H, letter dated 7-7-2009 addressed to Shri Rajeev Kumar Ex. PW1/I, letter dated 13-3-2013 Ex. PW1/J, letter dated 3-1-2012 Ex. PW1/K, copy of representation dated 10-12-2012 Ex. PW1/L, complaint dated 22-4-2013 addressed to Deputy Commissioner, Hamirpur Ex. PW1/M, complaint dated nil Ex. PW1/N, copy of representation dated 13-2-2013 Ex. PW1/O, letter dated 27-1-2014 regarding reinstatement of Sh. Budh Ram as daily paid labourer Ex. PW1/P, copy of Award dated 24-8-2012 passed by this Court Ex. PW1/Q and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondents had examined Dr. P.C. Sharma as RW1, tendered/proved his affidavit Ex. RW1/A, standing instructions regarding engagement of labour on contractual basis dated 5-12-2001 Ex. RW1/B, letter dated 18-9-2012 regarding engagement of labour on contractual basis Ex. RW1/C, copy of office order dated 21-2-2005 Ex. RW1/D, copy of letter dated 13-5-2016 regarding substitution of name of Dir. Institute of Biotechnology Ex. RW1/E and closed evidence.

8. It is pertinent to mention here that after closing evidence by the respondent, petitioner had moved an application for additional evidence which was allowed and Shri Jai Ram, Superintendent office of Dean College of Horticulture & Forestry Neri, Distt. Hamirpur, H.P. examined as PW2, tendered/proved seniority list of daily paid workers dated 30-4-2017 (07 leaves)

Ex. P-1, tentative seniority list of daily paid workers dated 11-4-2011 (06 leaves) Ex. P-2, tentative seniority list of daily paid workers dated 23-2-2011 (07 leaves) Ex. P-3, tentative seniority list of daily paid workers dated 1-10-2014 Ex. P-4, tentative seniority list of daily paid workers dated 17-10-2015 Ex. P-5, tentative seniority list of daily paid workers dated 16-3-2009 (29 leaves) Ex. P-6, tentative seniority list of daily paid workers dated 10-6-2011 (30 leaves) Ex. P-7, tentative seniority list of daily paid workers dated 7-10-2014 (31 leaves) Ex. P-8, tentative seniority list of daily paid workers dated 16-9-2016 (30 leaves) Ex. P-9, copy of mandays chart of contractual labourers (09 leaves) Ex. P-10 and closed additional evidence. However, Id. Counsel for the respondent Nos. 1 and 2 did not lead any further additional evidence which was closed *vide* separate statement of Id. Counsel for respondents.

9. I have heard Id. Authorized Representative representing petitioner and Id. Counsel. for respondents, gone through records of the case carefully relevant for disposal of this case.

10. From the contentions raised, following issues were framed on 28-05-2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondents during the year 2009 to 22-04-2013 is/was improper and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of petitioner *w.e.f.* 23-4-2013 is/was improper and unjustified? . . .*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
5. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
6. Whether the respondent University being educational institution does not fall under the jurisdiction of this Court. If so, its effect? . . .*OPR*.
7. Whether the claim petition is time barred by limitation as alleged? . . .*OPR*.

Relief :

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : Redundant

Issue No. 7 : No

Relief : Claim petition is partly allowed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1, 2 and 3:

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. Admittedly, petitioner had been engaged by respondents in year 2009 initially for a period of 89 days and thereafter with intermittent breaks several times till 2013 as is also evident from mandays chart Ex. P-10. Admittedly, petitioner had been engaged on the basis of policy for engagement of labourers on contractual basis incorporated in Ex. RW1/B dated 5-12-2001. It is admitted case of respondents that contractual labourers including petitioner had remained engaged till 2013 ever since initial engagement when respondents allegedly engaged contractor for outsourcing unskilled contractual labourers *w.e.f.* 1-5-2013. Equally admitted case of respondents is that duration of contractual labourers as per policy Ex. RW1/B was not to exceed 89 days in one spell and two spell in whole year and in case re-engaged was to be made then break of at least 15 days was necessary. It is admittedly not case of respondents that work and conduct of petitioner was not good and satisfactory. Admittedly, respondents had sufficient work and funds for engaging petitioner in different projects moreso when unskilled labourers were decided to be engaged from contractor on outsource basis. It is further admitted case of respondents that petitioner being contractual unskilled labourer provisions of Section 25 of Act did not apply as petitioner was squarely covered under Section 2(oo) (bb) of the 'Act'. In view of foregoing admitted facts on record, claim of petitioner qua termination in violation of Section 2 (oo) of Act needs to be determined and at the same it also needs to be determined, if respondents deliberately resorted to time to time termination of petitioner and thereafter final termination in the year 2013 falling within ambit of unfair labour practice under Section 2(ra) read with Clause 9 of Vth Schedule of 'Act'.

14. At the outset, it would be pertinent to mention here that Ex. RW1/B Standing Instructions of respondents for engaging contractual unskilled labourers clearly provided that no casual worker shall be engaged on muster roll by any functionary of University *w.e.f.* 1-1-2002 which further stipulated that **as far as possible** continuing casual worker should be adjusted in research and extension projects and thereafter demand for additional hands by deployment of labour on contract may be made. Clause (e) of policy is reproduced below for reference:

“(e) The duration of the engagement of contractual labour should not exceed 89 days in one spell and two spells in whole of the year and in case of re-engagement, a break of at least 15 days is necessary in each case”.

15. Ld. Counsel for petitioner referring to above-stated rule for engagement of unskilled contractual labour has contended that respondents being employer have given intermittent break in service which was countable as petitioner like any other labourer engaged on contract was not in position to bargain with respondents rather had no option but to work in illegal service conditions imposed. Ld. Counsel for the petitioner has relied upon judgment of Hon'ble Apex Court titled as **Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries**, reported in **2014 LLR 673** in which Hon'ble Apex Court has held that artificial break in service every year by reappointing the employee on the same post tantamounts to 'unfair labour practice' under Section 2(ra) of the Act which is not permissible under law. It was further observed that when repeated artificial periodical breaks in service are proved, the termination of workman would not be having protection under Section 2(oo)

(bb) of the Act which would attract relief of reinstatement with full back wages being illegal retrenchment.

16. PW1 has stepped into witness box deposed on oath as maintained in claim petition specifically stated that petitioner had been engaged by respondents in year 2009 who continued to work with respondents till 22-4-2013 when service of petitioner had been terminated finally along with 13 other workers without complying with provisions of the 'Act'. He has further stated neither any show cause notice nor compensation was given although petitioner had completed 240 days in preceding 12 months from date of termination. Significantly, Ex. P10 mandays does not factually show petitioner to have worked for 240 days immediately prior to his termination but plea of petitioner remains that Ex. RW1/B Standing Instructions for engagement of unskilled labourer on contract basis which fell in the ambit of an unfair labour practice had been invariably resorted to by respondents during period of employment of petitioner when there were sufficient funds and work with respondents and in the judgment (*supra*) of Hon'ble Apex Court petitioner was held liable to be reinstated in service being illegally retrenched.

17. Reliance has further been placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **1994 LLR 454** titled as Chief Administrator, Haryana Urban Development Authority, Manimajra and Anr. *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and Anr. Relevant para of judgment is reproduced below:

“Since provision of Section 2(oo) (bb) is in the nature of an exception it has to be construed strictly in favour of the workman as far as possible in letter and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb)** and the definition of 'retrenchment' has to be given full meaning...”

18. In the aforesaid judgment, Hon'ble High Court (DB) had upheld award passed by Labour Court relying upon judgment titled as **Kapurthala Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court** reported in **1984 (2) Indian Law Reporter 333 (DB)** in which service of workman had been terminated when case of those had completed 230 days. In this case, services of workmen were terminated without any departmental inquiry or charge-sheet and at the same time, no notice or compensation was paid. The bank before the Hon'ble Court took plea that service of workman for specified period and that too with notional breaks and thereafter workmen were neither entitled for any retrenchment compensation nor reinstatement. The court in (1984) case after dilating upon various aspects of matter held that **attempt of employer to dispense with service of workman so as to deprive him in continuity of service for specified period i.e. 240 days** envisaged under Section 25-B and 25-F of the Act amounts to unfair labour practice when it is found that conduct and service of workman was satisfactory. In 1994 judgment (*supra*) reference has been made to another case reported in **1989 (2) RSJ 55** titled as **Balbir Singh Vs. The Kurukshetra Central Co-operative Bank Limited** in which J. Amarjit Chaudhary interpreted Sub-clause (bb) (oo) of Section 2 and relevant para is reproduced below:

"Sub-clause (bb) of Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of 'retrenchment' clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of their principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to un-scrupulous employers to shunt out workers in the graph of non-renewal of their contract even when the work subsists. This Clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter

and spirit. **If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted, as to enable for employer to resort to the policy of hire and fire...."**

19. It is admittedly not the case of respondents that petitioner could not be deployed or employed or say that respondents had terminated service of petitioner since there was not sufficient work and funds. Be it stated that by engaging contractor for outsourcing unskilled labourer to be provided to respondents *w.e.f.* 1-5-2013 is clearly suggestive of the fact that respondents had sufficient work and funds. Not only this, even several unskilled labourer had been engaged for whole of the year as reflected in Ex. P5 the tentative seniority list as on 31-12-2014. Thus, intermittent breaks given by respondents to petitioner establishes unfair labour practice within the meaning of Section 2(ra) of the Act as the object behind engaging petitioner as contractual labourer and thereafter giving intermittent breaks and finally terminating without any notice, changing service conditions by asking petitioner to join contractor from a specific date as has also been admitted by RW1 Dr. P. C. Sharma in cross-examination who is the only witness examined by respondents. Equally important to mention here is that while filing reply respondents have withheld facts *qua* number of labourers engaged in two spells while implementing its policy Ex. RW1/B and at the same time their names too have not been disclosed establishes that respondents from very beginning while engaging petitioner intended that petitioner did not attain permanency in job but for reason stated hereinabove, petitioner is held to have continuous service from 2009 to 2013 as envisaged under Section 25-B of the Act. That being so, it was incumbent upon respondents to have issued notice under Section 25-F of Act and alternatively to pay wages of one month in lieu of notice which has not so been done by respondents establishing violation of provisions of Section 25-F of the Act for intermittent breaks as well as for final termination and for similar reasons disengaging petitioner periodically and retaining juniors in two spells as has come in evidence clearly establish violation of Section 25-F of the Industrial Disputes Act.

20. In order to prove his case, the petitioner has placed reliance upon Ex. R10 the mandays on fixed wages *w.e.f.* 2009 relating to petitioner which showed that petitioner had worked under project HMS 218-62 from 8-7-2012 to 19-8-2011 for 89 days and thereafter with several intermittent breaks till 20-12-2012 as shown in this document. The plea of the petitioner remains that the breaks had been given deliberately by respondents so that the petitioner did not complete 240 days. It has also been stated by petitioner that despite availability of funds and work intermittent breaks had been given from time to time during total period petitioner remained engaged with the respondents.

21. Before accepting plea of petitioner for having been given break deliberately from time to time, it would be also relevant to consider if the petitioner succeeded in establishing that if throughout the year intermittent breaks would not have been given, he would have continued to be in service for whole of the year and deemed to have completed continuous service in a year envisaged under Section 25-B of Act. To prove that provisions of Section 25-G of the Act was not adhered to by respondent while giving intermittent breaks reliance has been placed on seniority list Ex. P1 to P5 showing junior workmen to petitioner *i.e.* those daily beldar who joined after petitioner have been retained, engaging more than 300 days in a year whereas petitioner had been given intermittent breaks in the same year. The seniority list Ex. P1 shows that Asha Devi and Tara Chand figuring at serial No. 33 & 34 have joined on 13-7-2009. Ex. P4 is the tentative seniority list (as on 31-12-2013) of these officials showed *i.e.* Tara Chand to have worked for 365 days in the year 2010, 354 days in 2011, 366 days in 2012 and 365 days in 2013. Said Tara Chand figured at serial No.15 in the seniority list. Similarly, Asha Devi figuring at serial No. 16 in seniority list Ex.

R4 is shown to have worked for 304 days in 2010, 347 days in 2011, 341 days in 2012 and 363 days in 2013. With the aid of these entries concerning Tara Chand and Asha Devi figuring at serial No.15 and 16, it has been contended that there was sufficient work and funds available with the respondents in different projects and these two officials had joined after joining of petitioner who as per Ex. P10 figured at serial no.10 and had joined on 8-7-2009 and as both these workmen had been given sufficient work throughout the year(s) despite being engaged at later stage, the petitioner is held to have been given intermittent break from 8-7-2009 till 20-12-2009 deliberately by respondents despite having sufficient work and funds, Ex. P10 further shows that petitioner during these years had remained engaged with intermittent breaks for 12 times from 2009 to 2013 in project HMS 218-62. If Tara Chand and Asha Devi could be given work for more than 300 days in a year in particular year from 2010 to 2013, there was no reasons or compulsion for the respondents to have given break to the petitioner as stated above which manifestly shows that petitioner has been deliberately given breaks in service.

22. The tentative seniority list of daily wage labourers as it stood on 31-12-2013. Ex. P4 revealed that at serial No. 15 and 16 names of Tara Chand and Asha Devi existed but at serial Nos. 17 to 20 names of Amravati, Bhim Dutt, Kamla Devi and Saroj Bala have been mentioned who were shown to have joined and worked with respondents on 28-10-2010, 1-5-2012, 8-5-2012 and 15-5-2012 respectively much later than petitioner who joined in 2009. As such, latest seniority list available at the time when petitioner was removed from service except Tara Chand and Asha Devi, others are shown to have joined in the year 2010 and 2012 respectively as mentioned above. Nothing in the cross-examination of petitioner PW1 could be elicited by respondents which would demolish his claim *qua* deliberate intermittent breaks given by the respondents despite work and funds as other juniors had been given sufficient work for whole of the year and policy Ex. RW1/B dealing with contractual labourers was primarily a policy meant to exploit unskilled contractual labourers which could be termed as entirely based on unfair labour practice. RW1 Dr. P.C. Sharma, Director, Institute of Biotechnology and Environment Sciences, College of Horticulture and Forestry, Dr. Y. S. Parmar University of Horticulture and Forestry, Neri, District Hamirpur, H.P. has deposed that he had been posted on the present assignment since 1-11-2016 besides stated that petitioner worked with university but did not know that petitioner remained engaged from date of appointment till 22-4-2013. He has admitted in cross-examination that from 2002 to 2013, 30-32 contractual labourers were engaged, initially for 89 days who were appointed in two batches after engaging the first batch, second batch was engaged when first batch was disengaged and thereafter second batch was disengaged which support the plea of petitioner that the process of engagement and disengagements was deliberate on part of respondents. Apparently, giving such intermittent breaks to two groups of unskilled labourers without notice violated Section 25-G of the Act. As such, respondents are held to have given intermittent breaks to the petitioner in violation of provisions of Section 25-G of the Industrial Disputes Act.

23. Ld. Counsel for the petitioner has contended with vehemence that although adopting policy for engagement of unskilled labourer on contractual basis *vide* Ex. RW1/B, respondents had changed conditions of service of petitioner without issuing any prior notice *vide* which petitioner was required to join to contractor engaged to provide unskilled labourers on outsource basis to respondents which tantamounts to termination of service of petitioner as petitioner had been engaged with respondents since 2009 and no prior notice was served upon him in 2013 notifying petitioner to join contractor who was to provide labourers to respondents on the basis of some agreement entered into between respondents and contractor Ld. Counsel/Authorized Representative for petitioner had also contended if contractual employment is resorted to as mechanism to frustrate the claim so that employee did not become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from clause of Section 2(oo) of the Act, the same would be an unfair labour practice under the 'Act'. Before proceedings further, it would be most pertinent to refer to order dated 20-11-2014 Ex.

PW1/B of Hon'ble High Court of H.P. in which present petitioner along with 13 other had filed CWP No. 4991/2012 when respondents had been directed **“to not give fictional breaks to petitioner and if their services on this count already stand dispense with, no fresh hand shall be engaged without first affording the work to the petitioners”**. In pursuance to the above said order, petitioner alongwith 13 others had filed the complaint before Deputy Commissioner Hamirpur for non-enforcement of order dated 20-11-2014 passed by Hon'ble High Court of H.P. in pursuance to which Deputy Commissioner, Hamirpur had directed respondents to enforce the order of the Hon'ble High Court dated 20-11-2014. The plea of respondents in their joint reply remained that petitioner had not applied for re-engagement with contractor engaged in 2013 which leads to an irresistible inference that petitioner had been disengaged *i.e.* terminated from service of respondents in violation of provisions of Section 25-F of the Act. It is admittedly not the case of the respondents that any notice was served upon petitioner as could also be gathered from cross-examination of RW1 Dr. P.C. Sharma, Director Dean College of Horticulture respondent No. 1 who showed his ignorance if while disengaging petitioner in the year 2013, any notice was served upon petitioner by respondents. If any notice as required would have been issued by respondents, RW1 would have certainly denied this question. He has specifically admitted that **while terminating** service of petitioner no compensation was paid by respondents. Although these facts revealed in crossexamination of RW1 coupled with the order of Hon'ble High Court as referred to above, it can be safely gathered that respondents had not adhered to the mandate of Hon'ble High Court as the petitioner was not to be disengaged and if disengaged, no fresh hands shall be engaged although several persons juniors to petitioner have been engaged thereafter as per seniority list Ex. P5 which further showed availability sufficient work and funds with respondents.

24. Ld. Counsel for the respondents had contended that petitioner being contractual employee was not covered under the definition of retrenchment under Section 2 (bb) of the Act as under Clause (bb)(oo) termination of service of workman on contract specifically was excluded from definition of retrenchment. It is pointed out that since the petitioner was appointed on contract, he stands excluded from definition of “retrenchment” and therefore respondents were not required to adhere to provisions of Section 25-F of the 'Act' while disengaging petitioner. Ld. Counsel for the petitioner, on the other hand, repudiated the arguments so advanced by the Ld. Counsel for respondents and has placed reliance upon the judgment of Hon'ble High Court of H.P. titled as **Manoj Kumar Vs. H.R.T.C. and Anr.** reported in **2007 LLR 1155**. In the above said judgment Hon'ble High Court of H.P. has held that **when repeated and fictional breaks have been given to workman so that he should not attain permanency, it would not come within the purview of section 2(oo) (bb) of the Industrial Disputes Act excluding termination of retrenchment**. In the case before the Hon'ble High Court respondents had set up similar plea of petitioner being on contractual employment and thus Section 25-F could not be invoked by the petitioner. In the above said judgment of Hon'ble High Court of H.P. has held in para 12 reproduced below for reference:

“....12. The Division Bench of Allahabad High Court has held in *Shailendra Nath Vs. Vice Chancellor, Allahabad University*, 1987 Lab IC 1607 that section 2(oo) (bb) is in the nature of an exception to section 2(oo) and has to be construed strictly and in favour of the workman as the entire object of the Act is secure a just and fair deal to them. Their Lordships of the Allahabad High Court have held as under:

“The expression, 'termination for whatsoever reason' used in Cl. (oo) came up for interpretation before the Supreme Court in *State Bank of India Vs. N. S. Money*, AIR 1976 SC 1111: (1976 Lab IC 769). It was held to mean a termination which takes place either by active step of employer or by running out of stipulated period. The Hon'ble Court observed. **Termination embraced not merely the act of termination by the employer but the fact of termination, however, produced**”. Since this wide interpretation resulted in extending

benefit of retrenchment to even purpose or particular job or were casual workers the Legislature appears to have added sub cl. (bb) to cl.(oo) in 1984. Even though petitioners claim to have acquired status of regular employees before the clause was amended as each of them had completed 240 days prior to its addition in 1984 it may be examined if the petitioners can be said to be contractual employees as contemplated in this sub-clause. For that it is necessary to examine its scope and ambit. It may, however, be stated at the outset that it obviously attempts to exclude that which otherwise would have been included in principal clause or to be more precise is in the nature of an exception, therefore, it has to be construed strictly and in favour of workmen **as the entire objective of the Act is to secure just and fair deal for them.** Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But in a society with so wide a gap where bargaining power of employee is nil who is exposed to exploitation the nature of employment cannot be judged on the letter issued by the employer but on the nature of duties performed. For instance workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. **But if contractual employment is resorted to as a mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on the anvil of fairness and bonafide.** An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Cl. (bb). Because if it is left to be employer not to renew contract whenever he likes irrespective of any circumstances then the protection afforded to a workman by treating every termination, of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was bona fide. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice [See H.D. Singh Vs. Reserve Bank of India. (1985) 51 Fac LR 494: (1985 Lab IC 1733) (SC)]. From various annexures filed with affidavits it is clear that some of the petitioners were employed as Office Assistant, other book binders and peons. They were awarded benefit of bonus. They have been working for nearly five years. Their job was not casual, seasonal or of a daily worker. They have not been paid their salary on volume of work. Although the wages in some cases are computed on per day basis but the payment is monthly including holidays. **Their duty, therefore, was like a regular employee and not as casual, daily or seasonal worker...."**

Para no.17 of the aforesaid judgment is also reproduced below which has bearing on merits of issue and is reproduced below:

"17. The Hon'ble Supreme Court has held in Haryana State Electronics Development Corporation Limited Vs. Mamni (2206) 9 SCC 434: AIR 2006 SC 2427: 2006 LLR 667 (SC), that appointment for a short period (89 days) and termination of service at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one and a half years, in such circumstances, the Hon'ble Supreme Court has **held the termination not bona fide but adopted to defeat the object of the Act.** Thus, it is not covered by section 2(oo)(bb) of the Industrial Disputes Act, 1947....."

25. Reliance has further been placed by Hon'ble High Court in Manoj Kumar's case on another judgment of Hon'ble High Court of Bombay titled as **Dalip H. Shirke Vs. Zila Parishad Yavatmal**, reported in **1990 Lab IC 100** in which judgment of Hon'ble Apex Court titled as **State Bank of India Vs. N. Sundaramoney** reported in **1976 Lab IC 769** had been relied by Hon'ble High Court of Bombay. It was observed that exception as contained in sub-clause (bb) will have to be strictly construed as it takes away certain rights of workmen which such workmen have been enjoying earlier to the amendment. **The benefit of law laid down by the Supreme Court was extended to all the workmen even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work.** In the judgment of **N. Sundaramoney's case** relied in 2007 case and had observed that time and again it has been held that **welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society.** It was observed that **the employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions even unconscionable conditions of service in the contract of employment.** In the case in hand before this court, respondents had adopted **policy of engagement of contractual labourer to avoid financial liability** Ex. RW1/B which prescribed the manner in which workman was to employed for 89 days in two spells which follows that contractual labourers engaged for 89 days in first spell were to be disengaged after 89 days engaging new batch and following such engagements show that after first engagement of labourers as stated above junior contractual labourer were to certainly disengage senior workmen *i.e.* first batch for 89 days without notice despite availability of work and funds which manifestly violated Section 25-G of the 'Act'.

26. In the concluding para in Manoj Kumar's case, Hon'ble High Court has held that workman had been offered appointment with fictional breaks to prevent petitioner from taking benefit of Section 25-F of Act. The appointment orders issued in successor to workman was camouflage to take out petitioner-workman from the ambit of Section 25-F of the Industrial Disputes Act. **The appointment of petitioner cannot be termed as contractual and his case will fall under Section 2(oo) (bb) of the Industrial Disputes Act and it will be covered under expression "retrenchment". The act of respondents of engaging petitioner giving fictional breaks was not bonafide and reinstatement of petitioner-workman was allowed.** Applying the ratio of case law referred to above, it may not be erroneous to observe that in the case in hand before this court, contractual employment of petitioner and time to time termination was made by respondents so that petitioner did not become permanent and at the same time act of respondents in throwing out petitioner from work with contractor without notice is manifestly unfair labour practice and petitioner would be covered under definition of retrenchment under Section 2(oo) and not under exception in Clause (bb) (oo) as has been held in Manoj Kumar's case.

27. Thus, in the case before this court respondents had made scheme which was significantly promulgated for engagement of contractual labourer for 89 days in one spell and in the case before the Hon'ble High Court of Punjab & Haryana having similar period of engagement of workmen respondents were held to have not complied with the Section 25-F of the Industrial Disputes Act as the workman who was a clerk had been engaged for 89 days and given fresh appointment twice for 89 days. As such, referring to aforesaid case law and evidence on record, it may not be erroneous to conclude that respondents had resorted to unfair labour practice initially by adopting standing instruction for engagement of contractual labour Ex. RW1/B which in its prescribed clause (e) duration of contractual labourer was to be not more than 89 in a year for two spells and thereafter by abrupting engagement of labourers on outsource basis through contractor. But in this case, the petitioner had been engaged several times with intervals as shown in mandays chart Ex. P10 from 2009 to 2013 and thus the action of respondents in giving intermittent break as well as finally terminating service without notice and asking the petitioner to work with contractor

who was to provide unskilled labourers to respondents on outsource basis was nothing else but termination of service of petitioner without any notice and that the intermittent breaks are held to be deliberately made by the respondents with the object to avoid financial liability upon respondents which could not be accepted as ground to negate or say defeat claim of petitioner. The termination of petitioner would thus be not excluded under Section 2 (oo) (bb) and squarely fell under the definition of retrenchment under the Act necessitating issuance of notice of one month envisaged under Section 25-F of the Act and in alternative wages for one month in lieu of notice period which has admittedly not been done as RW1 has shown his inability to tell if while disengaging petitioner any notice was served. Being the Director in university authorized to contest and depose in this case on behalf of respondents was expected to know material facts qua engagement and disengagement of petitioner. Accordingly, applying the case law as referred to above, it is held that petitioner had been wrongly retrenched from service by the respondents in violation of provisions of Act.

28. Ld. Counsel for the petitioner has taken this court through Award dated 24-8-2012 Ex. PW1/Q passed in Reference No. 154/2012 titled as Mohinder Singh *versus* Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. & Anr. *vide* which this court had directed reinstatement of petitioner setting aside retrenchment order *qua* petitioner *w.e.f.* 1-1-2005 by respondents and was held entitled for seniority and continuity in service from the date of illegal termination except back wages. While relying upon the above said Award, ld. counsel for the petitioner has contended that above said award has not been assailed by respondents which had attained finality having similar facts with regard to award Ex. PW1/Q. RW1 in cross-examination has showed his inability to tell if above said award passed against the respondent had been challenged however specifically admitted that said Mohinder Singh was still working with the university. Statement of RW1 recorded on 1-10-2011 and award was passed on 28-4-2017 and was allegedly terminated on 1-1-2005 which goes to show after implementation of award Ex. PW1/Q above-named Mohinder Singh has been in continuous service with the respondent from 1-1-2005 to 31-10-2017 when RW1 was cross-examined. As such, Mohinder Singh's case having similar facts and not challenged by respondents is equally binding upon respondents qua similarly situated workmen. In the said judgment also, my ld. predecessor-in-office in para No. 26 on record has specifically held that action of respondents was unfair labour practice under Clause 10 Vth Schedule appended under the Act. In so far claim of petitioner qua back wages from date of illegal termination in the year 2013 is concerned, suffice would be state here that onus to prove that petitioner/claimant remained unemployed and not gainfully employed was upon respondents. Although, petitioner has alleged that he remained unemployed and was not gainfully employed ever since his termination in 2013 by filing affidavit to this effect could not be relied as being a young person ageing about 40 years would not have sit idle for about five years without earning and thus his plea to this effect merits rejection. Accordingly, petitioner is held to be not entitled for back wages. Accordingly, issues No. 1 and 2 are answered in affirmative holding that act of respondents in giving time to time break and finally terminating on 23-4-2013 is improper and unjustified. However, issue No. 3 is decided as discussed holding that petitioner is entitled to be reinstated in service with seniority and continuity in service without back wages. Issues are decided accordingly.

Issue No. 4 :

29. Ld. Counsel for the respondents has contended that College of Horticulture and Forestry, Neri, Hamirpur, H.P. does not fall under the jurisdiction before this court. On the other hand, ld. Counsel for petitioner had relied upon **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548** in which the Hon'ble Apex Court has dealt with the definition of "industry" envisaged under Section 2(j) of the Act and held that university would fall within the definition of industry and its employees are workman entitled to protection envisaged under the Industrial Disputes Act, 1947. Ld. Counsel for respondents has failed to

repudiate arguments and as such university cannot be stated to be not industry and its workers to be not workmen. Issue is decided in negative against the respondents and in favour of petitioner. Since issues No. 4 and 6 are the same, as such in view of findings of issue No. 4 as stated above, issue No. 6 has become redundant.

Issue No. 5 :

30. Ld. Counsel for the respondents has not pressed this issue during course of argument. Otherwise also, from pleadings on record no inference of claim petition being not maintainable can be raised industrial dispute. In the case in hand, the petitioner had challenged his illegal termination by the respondents who had allegedly violated of Section 25-F and 25-G of the Act. As such, being aggrieved with action of the respondents in terminating service, petitioner could legitimately agitate his claim before this court. Issue No. 5 is answered in negative in favour of petitioner and against the respondents.

Issue No. 7 :

31. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram Vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand Vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager Vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar Vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. Vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

32. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondents. Accordingly, the petition as filed by the petitioner coupled with evidence on record cannot be held to be hit by the vice of delays and laches as alleged

by the respondents. Hence, this issue is decided against the respondent and is answered accordingly.

Relief:

33. As sequel to my findings on foregoing issues Nos. 1 to 6, the reference/claim petition is partly allowed and the respondents are hereby directed to re-engage the petitioner forthwith who is further held to be in continuous uninterrupted service with the respondents from the date of his initial engagement in the year 2009 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement however, petitioner shall be entitled to seniority and continuity in service from the date of his initial engagement **except back wages**. In the peculiar circumstances of the case, the parties are left to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2018.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT –
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 509/ 2016

Sh. Kamal Singh s/o Shri Hari Singh, r/o Village Jadour, P.O. Tarsuh, Tehsil Shri Naina Deviji, District Bilaspur, H.P. *. Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer). *. Respondents.*

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No.1.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No.1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.47 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

28-04-2018

Sd/-
(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. 495/ 2016

Sh. Harjinder Singh s/o Shri Bhola Nath, r/o V.P.O. Tarso, Tehsil Shri Naina Deviji,
District Bilaspur, H.P. *..Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab(Contractor).
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) *..Respondents.*

28-04-2018 *Present:* None for the petitioner.
 Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for
 the respondent No. 1.
 Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.38 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.
 Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, adv. Csl. for
 the respondent No. 1.
 Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.48 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
 28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
 CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 496/ 2016

Sh. Sant Ram s/o Shri Bhagwanu Ram, r/o Village Palsehar, P.O. Lehari, Tehsil Shri Naina
 Deviji, District Bilaspur, H.P. *. .Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).

2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer). . *Respondents.*

28-04-2018 Present: None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 Present: None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.50 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref.: No. 494/ 2016

Sh. Banarasi Dass s/o Shri Sant Ram, r/o Village Jheera, P.O. Tobba, Tehsil Shri Naina Deviji, District Bilaspur, H.P. . *Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) . *Respondents.*

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D. A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.42 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.52 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 507/ 2016

Sh. Pyar Singh s/o Sh. Gajjan Singh, r/o Village Dharot, P.O. Lakhnu, Tehsil Shri Naina
Deviji, District Bilaspur, H.P. . *Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab
(Contractor).

2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District
Bilaspur, H.P. (Principal Employer). . *Respondents.*

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the
respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due
knowledge. It is 11.43 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the
respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is
2.55 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the
fact that he is not interested to pursue present reference/claim petition and accordingly reference is
disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 508/2016

Sh. Narender Kumar s/o Shri Jai Kishan, r/o Village Ghatwal, P.O. Bassi, Tehsil Shri Naina Deviji, District Bilaspur, H.P. . *Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) . *Respondents.*

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.33 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.43 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 492/ 2016

Sh. Bhupender Singh s/o Sh. Deena Nath, r/o V.P.O. Tobba, Tehsil Shri Naina Deviji,
District Bilaspur, H.P. . . . *Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) . . . *Respondents.*

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present*: None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.45 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 490/ 2016

Sh. Kuldeep Singh s/o Shri Nathu Ram, r/o V.P.O. Lehari, Tehsil Shri Naina Deviji, District Bilaspur, H.P. . *Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) . *Respondents.*

28-04-2018 *Present*: None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.36 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.46 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 491/ 2016

Sh. Gurbhajan Singh s/o Sh. Ram Asra, r/o Village Baherda, P.O. Bassi, Tehsil Shri Naina Deviji, District Bilaspur, H.P. . .Petitioner.

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor).

2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer). . Respondents.

28-04-2018 *Present*: None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present*: None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Sh. Surender Kumar s/o Shri Daya Ram, r/o Village Roura Jaman, P.O. Tarsu, Tehsil Shri Naina Deviji, District Bilaspur, H.P. . *Petitioner.*

Versus

1. The Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor) .
2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) . *Respondents.*

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.32 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

28-04-2018 *Present:* None for the petitioner.

Sh. Sunny Kaundal, Adv. *vice* of Sh. Manish Awasthi, Adv. Csl. for the respondent No. 1.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.42 P.M. None appearance of petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference/claim petition and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
28-04-2018

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**RESULT OF 70th DEPARTMENTAL EXAMINATION FOR THE CIVIL JUDGE
HELD IN THE MONTH OF JANUARY, 2019**

NOTE : 'WITH CREDIT (WC)' means passed by obtaining $\frac{3}{4}$ th of the maximum marks:
'HIGHER STANDARD(HS)' means passed by obtaining $\frac{2}{3}$ rd of the maximum marks:
'LOW STANDARD (LS)' means passed in the lower standard by obtaining 50% marks.

Sr. No.	Name of the Officer	Roll No.	Group A-I Criminal Law (120 marks)	Group A-II Civil Law (120 marks)	Group-B Revenue Law-I & Revenue Law-II (120 marks each) 240 marks	Group-C Accounts (160 marks)	Group-D Constitutional Law (100 marks)
1	2	3	4	5	6	7	8
1.	Sh. Parth Jain	501	-	-	-	122 WC	-
2.	Ms. Apoorva Ran	502	Absent	Absent	Absent	Absent	Absent
3.	Ms. Swati Barwal	503	85 HS	86 HS	108 104 = 212 WC	126 WC	74 ½ HS
4.	Ms. Isha Agarwal	504	71 LS	93 WC	106 100 = 206 WC	126 WC	84 WC
5.	Sh. Rahul	505	80 HS	83 HS	99 97 = 196 WC	113 HS	77 WC
6.	Sh. Raghav Gupta	506	86 HS	84 HS	97 98 = 195 WC	107 HS	72 HS

(Poonam Mahajan)
Addl. Registrar (O&A)/Superintendent
Departmental Examination
20-4-2019

(Dr. Baldev Singh)
Registrar (Vigilance)/Secretary
Departmental Examination Committee
20-4-2019

ब अदालत कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर (हि0 प्र0)

मुकद्दमा नम्बर
01/2019

तारीख रजुआ
03-04-2019

तारीख फैसला
2-05-2019

Sh. Vinod Singh s/o Late Sh. Jagdev, r/o Village Kothi, Tehsil Kalpa, District Kinnaur (H.P.).

बनाम

- आम जनता ग्राम कोठी
- प्रधान, ग्राम पंचायत कोठी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)

विषय.—प्रार्थी की माता का नाम ग्राम पंचायत कोठी के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज करवाये जाने बारे अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

हर खास व आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि Sh. Vinod Singh ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन-पत्र मय शपथ-पत्र प्रस्तुत किया है कि उनकी माता Yang Sarni पत्नी स्व० श्री जगदेव की मृत्यु दिनांक 28-01-2003 को हुई थी तथा अज्ञानतावश प्रार्थी ने उसका पंजीकरण ग्राम पंचायत कोठी के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, अब प्रार्थी उपरोक्त मृत्यु तिथि ग्राम पंचायत कोठी के जन्म एवं मृत्यु पंजीकरण रजिस्टर में दर्ज करवाना चाहता है इस विषय में आदेश जारी करने का अनुरोध किया है।

अतः ग्राम पंचायत कोठी, तहसील कल्पा, जिला किन्नौर की जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि यदि Yang Sarni पत्नी स्व० श्री जगदेव की मृत्यु दिनांक 28-01-2003 का पंजीकरण ग्राम पंचायत कोठी के मृत्यु पंजीकरण रजिस्टर में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 02-05-2019 या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा आवेदन-पत्र पर मृत्यु पंजीकरण आदेश पारित कर सचिव, ग्राम पंचायत कोठी को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 03-04-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
कल्पा, जिला किन्नौर (हि० प्र०)।

ब अदालत कार्यकारी दण्डाधिकारी, कल्पा, जिला किन्नौर (हि० प्र०)

मुकद्दमा नम्बर
02/2019

तारीख रजुआ
03-04-2019

तारीख फैसला
2-05-2019

Smt. Ram Sanyog w/o Vinay Singh, r/o Village Telangi, Tehsil Kalpa, District Kinnaur (H.P.).

बनाम

1. आम जनता ग्राम तेलंगी
2. प्रधान, ग्राम पंचायत तेलंगी, तहसील कल्पा, जिला किन्नौर (हि० प्र०)

विषय.—प्रार्थी की पुत्री का नाम व जन्म तिथि ग्राम पंचायत खवांगी के जन्म पंजीकरण रजिस्टर में दर्ज करवाये जाने बारे अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

हर खास व आम जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि Smt. Ram Sanyog ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन-पत्र मय शपथ-पत्र प्रस्तुत किया है कि उनकी पुत्री Muskan पुत्री श्री विनय सिंह का जन्म दिनांक 05-04-2003 को हुआ है तथा अज्ञानतावश प्रार्थी ने उसका पंजीकरण ग्राम पंचायत तेलंगी के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, अब प्रार्थी उपरोक्त नाम व जन्म तिथि ग्राम पंचायत तेलंगी के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहती है इस विषय में आदेश जारी करने का अनुरोध किया है।

अतः ग्राम पंचायत तेलंगी, तहसील कल्पा, जिला किन्नौर की जनता को बजरिया इश्तहार के माध्यम से सूचित किया जाता है कि यदि Muskan पुत्री श्री विनय सिंह का जन्म जो दिनांक 05-04-2003 को हुआ है का पंजीकरण ग्राम पंचायत तेलंगी के जन्म पंजीकरण रजिस्टर में दर्ज करने बारे कोई आपत्ति हो तो वह दिनांक 02-05-2019 या इससे पूर्व अदालत में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा आवेदन-पत्र पर जन्म पंजीकरण आदेश पारित कर सचिव, ग्राम पंचायत तेलंगी को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 03-04-2019 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
कल्पा, जिला किन्नौर (हि0 प्र0)।

ब अदालत श्री दौलत राम ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति (हि0प्र0)

ब मुकद्दमा :

राजेन्द्र कुमार पुत्र स्व0 श्री नोरबू छेरिंग, गांव जगदंग, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना-पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

राजेन्द्र कुमार पुत्र स्व0 श्री नोरबू छेरिंग, गांव जगदंग, कोठी सिस्सू, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन शपथ पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें उसने उल्लेख किया है कि उसका नाम शैक्षणिक प्रमाण-पत्र, आधार कार्ड, परिवार रजिस्टर तथा दीगर सरकारी कागजात में राजेन्द्र कुमार दर्ज है। जोकि सही व दुरुस्त है, लेकिन भू-राजस्व अभिलेख पटवार वृत्त सिस्सू, तहसील लाहौल, जिला लाहौल एवं स्पिति में राजेश चन्द दर्ज है। जिस कारण उन्हें भारी मानसिक परेशानी का सामना करना पड़ रहा है। अब प्रार्थी राजस्व अभिलेख पटवार वृत्त सिस्सू, तहसील लाहौल, जिला लाहौल एवं स्पिति में राजेश चन्द के स्थान पर राजेश चन्द उर्फ राजेन्द्र कुमार दर्ज करना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त राजेन्द्र कुमार के नाम की दुरुस्त करके राजेश चन्द उर्फ राजेन्द्र कुमार दर्ज करने में कोई उजर/एतराज हो तो वह इस अदालत में दिनांक 03 मई, 2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ-पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम राजस्व अभिलेख पटवार वृत्त सिस्सू में राजेश चन्द उर्फ राजेन्द्र कुमार दर्ज करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 3 अप्रैल, 2019 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील लाहौल, जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

**ब अदालत श्री दौलत राम ठाकुर, सहायक समाहर्ता, द्वितीय श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति (हि0प्र0)**

ब मुकद्दमा :

नोरबू पुत्र श्री नावांग टशी, गांव दारचा सूमदो, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

श्री नोरबू पुत्र श्री नावांग टशी, गांव दारचा सूमदो, कोठी कोलोंग, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0प्र0) ने एक आवेदन शपथ पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें उसने उल्लेख किया है कि उसका नाम शैक्षणिक प्रमाण—पत्र, आधार कार्ड, परिवार रजिस्टर तथा दीगर सरकारी कागजात में नोरबू दर्ज है जोकि सही व दुरुस्त है, लेकिन भू—राजस्व अभिलेख पटवार वृत्त दारचा सूमदो, तहसील लाहौल, जिला लाहौल एवं स्पिति में तन्जिन नोरबू दर्ज है। जिस कारण उन्हें भारी मानसिक परेशानी का सामना करना पड़ रहा है। अब प्रार्थी राजस्व अभिलेख पटवार वृत्त दारचा सूमदो, तहसील लाहौल, जिला लाहौल एवं स्पिति में तन्जिन नोरबू के स्थान पर नोरबू दर्ज करना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त तन्जिन नोरबू के नाम की दुरुस्त करके नोरबू दर्ज करने में कोई उजर/एतराज हो तो वह इस अदालत में दिनांक 03 मई, 2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ—पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम राजस्व अभिलेख पटवार वृत्त दारचा सूमदो में नोरबू दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 3 अप्रैल, 2019 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील लाहौल, जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

**ब अदालत श्री दौलत राम ठाकुर, सहायक समाहर्ता, द्वितीय श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति (हि0प्र0)**

ब मुकद्दमा :

(सोहन सिंह पुत्र स्व0 श्री सोनम डुगले, गांव जगला, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)।)

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराए राजस्व अभिलेख व ग्राम पंचायत, परिवार रजिस्टर में नाम दुरुस्ती करने बारे।

सोहन सिंह पुत्र स्व0 श्री सोनम डुगले, गांव जगला, कोठी गौन्धला, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन शपथ पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें उसने उल्लेख

किया है कि उसका नाम आधार कार्ड व पेन्शन के कागजातों दीगर सरकारी कागजात में सोहन सिंह दर्ज है। जोकि सही व दुरुस्त है, लेकिन भू-राजस्व अभिलेख पटवार वृत्त गौन्धला व पंचायत परिवार रजिस्टर, तहसील लाहौल, जिला लाहौल एवं स्पिति में छोपेल दर्ज है। जिस कारण उन्हें भारी मानसिक परेशानी का सामना करना पड़ रहा है। अब प्रार्थी राजस्व अभिलेख पटवार वृत्त गौन्धला व पंचायत परिवार रजिस्टर, तहसील लाहौल, जिला लाहौल एवं स्पिति में छोपेल के स्थान पर छोपेल उर्फ सोहन सिंह दर्ज करना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त सोहन सिंह के नाम की दुरुस्त करके छोपेल उर्फ सोहन सिंह दर्ज करने में कोई उजर/एतराज हो तो वह इस अदालत में दिनांक 03 मई, 2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ-पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम राजस्व अभिलेख पटवार वृत्त गौन्धला और ग्राम पंचायत गौन्धला में छोपेल उर्फ सोहन सिंह दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 3 अप्रैल, 2019 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील लाहौल, जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

ब अदालत श्री दौलत राम ठाकुर, सहायक समाहर्ता, द्वितीय श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति (हि0प्र0)

ब मुकद्दमा :

सुरेश कुमार पुत्र श्री कलजंग, गांव गैमूर, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना-पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

सुरेश कुमार पुत्र श्री कलजंग, गांव गैमूर, कोठी कालोंग, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन शपथ पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें उसने उल्लेख किया है कि उसका नाम आधार कार्ड, वोटर कार्ड तथा दीगर सरकारी कागजात में सुरेश कुमार दर्ज है। लेकिन भू-राजस्व अभिलेख पटवार वृत्त कोलोंग, तहसील लाहौल, जिला लाहौल एवं स्पिति में छेवांग सम्फेल दर्ज है। जिस कारण उन्हें भारी मानसिक परेशानी का सामना करना पड़ रहा है। अब प्रार्थी राजस्व अभिलेख पटवार वृत्त कोलोंग, तहसील लाहौल, जिला लाहौल एवं स्पिति में सुरेश कुमार के स्थान पर सुरेश कुमार उर्फ छेवांग सम्फेल दर्ज करना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त सुरेश कुमार के नाम की दुरुस्त करके सुरेश कुमार उर्फ छेवांग सम्फेल दर्ज करने में कोई उजर/एतराज हो तो वह इस अदालत में दिनांक 03 मई, 2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ-पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम

राजस्व अभिलेख पटवार वृत्त कोलोंग में सुरेश कुमार उर्फ छेवांग सम्फेल दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 3 अप्रैल, 2019 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील लाहौल, जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

ब अदालत श्री दौलत राम ठाकुर, सहायक समाहर्ता, द्वितीय श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति (हि0प्र0)

ब मुकद्दमा :

प्रेम दास पुत्र श्री धर्म दास, गांव ठपाक, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)

बनाम

आम जनता

विषय.—प्रार्थना-पत्र बराए ग्राम पंचायत में नाम दुरुस्ती करने बारे।

प्रेम दास पुत्र श्री धर्म दास, गांव ठपाक, कोठी रानिका, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन शपथ पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें उसने उल्लेख किया है कि उसका नाम भू-राजस्व अभिलेख पटवार वृत्त लोट में प्रेम दास दर्ज है। जो कि सही व दुरुस्त है। लेकिन ग्राम पंचायत रानिका, तहसील लाहौल, जिला लाहौल एवं स्पिति में धर्म चन्द दर्ज है। जिस कारण उन्हें भारी मानसिक परेशानी का सामना करना पड़ रहा है। अब प्रार्थी ग्राम पंचायत रानिका, तहसील लाहौल, जिला लाहौल एवं स्पिति में धर्म चन्द के स्थान पर प्रेम दास दर्ज करना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त धर्म चन्द के नाम का दुरुस्त करके प्रेम दास दर्ज करने में कोई उजर/एतराज हो तो वह इस अदालत में दिनांक 03 मई, 2019 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है, अन्यथा मुताबिक शपथ-पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम ग्राम पंचायत रानिका में प्रेम दास दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 3 अप्रैल, 2019 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील लाहौल, जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Shimla (Urban)

In the matter of :

1. Sh. Sanjay Sood s/o Sh. Yash Pal Sood aged about 58 years, r/o 14 Subzi Mandi Shimla, Tehsil & District Shimla, Himachal Pradesh .

2. Mrs. Madhuri Sood d/o Sh. Tara Chand Sood aged about 54 years, r/o 14 Subzi Mandi Shimla, Tehsil & District Shimla, Himachal Pradesh . . Applicant.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 15 of Special Marriage Act, 1954.

Sh. Sanjay Sood and Mrs. Madhuri Sood have filed an application alongwith affidavits before the court of undersigned on 24-04-2019 under section 15 of Special Marriage Act, 1954 that they had solemnized their marriage on 20th January, 1988 at Puran Mal Dharamshala, Bus Stand Shimla, Tehsil & District Shimla and they are living as husband and wife since then. Hence their marriage may be registered under special marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before within 30 days from the date of publication of this notice in official gazette after that no objection will be entertained and marriage will be solemnized accordingly.

Issued today on 24th April, 2019 under my hand and seal of the court.

Seal.

NIRAJ CHANDLA (H.P.A.S.),
Marriage Officer-cum-Sub-Divisional Magistrate,
Shimla (Urban).

न्यायालय श्री नारायण सिंह चौहान, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना,
जिला ऊना (हि0 प्र0)

दावा संख्या : /Teh. Una/M. Reg./2019

शुभम सैनी पुत्र श्री दीना नाथ सैनी, वासी वार्ड नं0 4, विवेक नगर ऊना, तहसील व जिला ऊना, (हि0 प्र0)।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकद्दमा उनवान बाला में शुभम सैनी पुत्र श्री दीना नाथ सैनी, वासी वार्ड नं० 4, विवेक नगर ऊना, तहसील व जिला ऊना (हि० प्र०) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 18-06-2017 को रुची शर्मा पुत्री श्री सुदर्शन कुमार, वासी वार्ड नं० 3, मोहल्ला गलुआ ऊना, तहसील व जिला ऊना के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण नगरपालिका ऊना, तहसील व जिला ऊना (हि० प्र०) में दर्ज न करवा सका है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित प्रार्थीगण के विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण नगरपालिका ऊना, तहसील व जिला ऊना (हि० प्र०) में दर्ज करवाने बारे किसी को कोई उजर या एतराज हो तो वह दिनांक 03-05-2019 अथवा उससे पूर्व न्यायालय हजा में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 04-04-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

नारायण सिंह चौहान,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि० प्र०)।

ब अदालत श्री अपूर्व शर्मा, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग ऊना,
जिला ऊना (हि० प्र०)

मुकद्दमा : इन्द्राज सेहत नाम

पेशी : 08-05-2019

दावा संख्या : /Teh. Una/M. Reg./2019

दीपक कुमार पुत्र श्री सूरम सिंह, वासी अप्पर वसाल, तहसील व जिला ऊना (हि० प्र०) सायल।

बनाम

आम जनता

विषय.—दरुस्ती नाम हि० प्र० रा० अधिनियम, 1954 की जेर धारा 37 के तहत उप महाल ठाकुरद्वारा में नाम दरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम दीपक कुमार पुत्र सूरम सिंह है जबकि उप-महाल ठाकुरद्वारा के राजस्व अभिलेख में उसका नाम प्रदीप कुमार पुत्र सूरम सिंह दर्ज है जो कि गलत इन्द्राज हुआ है प्रार्थी उक्त नाम को दुरुस्त करके प्रदीप कुमार उपनाम दीपक कुमार पुत्र श्री सूरम सिंह दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 08-05-2019 को सुबह 10.00 बजे हाजिर आ

सकता है हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 05-04-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

अपूर्व शर्मा,
नायब तहसीलदार एवं सहायक समाहर्ता
द्वितीय वर्ग ऊना, जिला ऊना (हि0 प्र0)।

ब न्यायालय श्री नारायण सिंह चौहान, तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना,
जिला ऊना (हि0 प्र0)

दावा संख्या :/Teh. Una/B&D /2019

कमलेश कुमारी पत्नी श्री राम किशोर, वासी वार्ड नं0 4, विवेक नगर ऊना, तहसील व जिला ऊना
(हि0 प्र0)।

बनाम

आम जनता

दरखास्त जेर धारा 13(3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

उपरोक्त मुकद्दमा उनवान वाला में कमलेश कुमारी पत्नी श्री राम किशोर, वासी वार्ड नं0 4, विवेक नगर ऊना, तहसील व जिला ऊना (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र प्रस्तुत किया है कि उसकी पुत्री ज्योती का जन्म वार्ड नं0 4, विवेक नगर ऊना में दिनांक 18-02-2015 को हुआ था लेकिन अज्ञानता के कारण जन्म का इन्द्राज स्थानीय रजिस्ट्रार, जन्म व मृत्यु पंजीकरण नगरपालिका ऊना, तहसील व जिला ऊना (हि0 प्र0) में दर्ज न करवा सकी है।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित जन्म का इन्द्राज स्थानीय रजिस्ट्रार, जन्म व मृत्यु, पंजीकरण नगरपालिका ऊना, तहसील व जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को कोई उजर या एतराज हो तो वह दिनांक 08-05-2019 को अथवा उससे पूर्व न्यायालय हजा में उपस्थित होकर प्रस्तुत कर सकता है अन्यथा उसके बाद उक्त वर्णित जन्म के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबिले समायत न होगा।

आज दिनांक 08-04-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

नारायण सिंह चौहान,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

**ब अदालत श्री अपूर्व शर्मा, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग ऊना,
जिला ऊना (हि0 प्र0)**

मुकद्दमा : इन्द्राज सेहत नाम

पेशी : 17-05-2019

दावा संख्या : /Teh. Una/M. Reg./2019

दर्शन सिंह पुत्र श्री जुल्फी राम, वासी कुरियाला, तहसील व जिला ऊना (हि0 प्र0) सायल।

बनाम

आम जनता

विषय.—दरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत महाल कुरियाला में नाम दरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना-पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम दर्शन सिंह पुत्र श्री जुल्फी है जबकि महाल कुरियाला के राजस्व अभिलेख में उसका नाम दर्शन कुमार पुत्र श्री जुल्फी दर्ज है जो कि गलत इन्द्राज हुआ है प्रार्थी उक्त नाम को दुरुस्त करके दर्शन कुमार उपनाम दर्शन सिंह पुत्र श्री जुल्फी दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना-पत्र के सन्दर्भ में उपरोक्त नाम की दरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 17-05-2019 को सुबह 10.00 बजे हाजिर आ सकता है हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 17-04-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

अपूर्व शर्मा,
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग ऊना,
जिला ऊना (हि0 प्र0)।

**ब अदालत श्री अपूर्व शर्मा, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग ऊना,
जिला ऊना (हि0 प्र0)**

मुकद्दमा : इन्द्राज सेहत नाम

पेशी : 17-05-2019

दावा संख्या : /Teh. Una/M. Reg./2019

गुरदयाल सिंह पुत्र धनिया, वासी नारी निचली, तहसील व जिला ऊना (हि0 प्र0) सायल।

बनाम

आम जनता

विषय.—दरुस्ती नाम हि० प्र० रा० अधिनियम, 1954 की जेर धारा 37 के तहत उप महाल नारी निचली में नाम दरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना—पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम गुरदयाल सिंह पुत्र धनिया है जबकि उप—महाल नारी निचली के राजस्व अभिलेख में उसका नाम गुरदयाल चन्द पुत्र धनिया दर्ज है जो कि गलत इन्द्राज हुआ है प्रार्थी उक्त नाम को दरुस्त करके गुरदयाल चन्द उपनाम गुरदयाल सिंह पुत्र धनिया दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना—पत्र के सन्दर्भ में उपरोक्त नाम की दरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 08-05-2019 को सुबह 10.00 बजे हाजिर आ सकता है हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 17-04-2019 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

अपूर्व शर्मा,
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय वर्ग ऊना,
जिला ऊना (हि० प्र०)।

ब अदालत तहसीलदार एवं सहायक समाहर्ता, प्रथम वर्ग ऊना, जिला ऊना, हि० प्र०

इश्तहार मुशत्री मुनादी जेर धारा 23 हि० प्र० भू—राजस्व अधिनियम, 1954

दरखास्त बमुराद दरुस्ती राजस्व रिकार्ड महाल कोटला कलां, लोअर तहसील व जिला ऊना, (हि० प्र०) जमाबन्दी साल 2016-17 में बलराज की बजाये राजेश कुमार दर्ज करने बारे।

बनाम

आम जनता

बजरिया जमादार तहसील कार्यालय ऊना

उपरोक्त मुकद्दमा उनवान बाला में प्रार्थी राजेश कुमार पुत्र अमृत लाल पुत्र ज्ञान चद, जात सैणी, वासी कोटला कलां लोअर, तहसील व जिला ऊना (हि० प्र०) ने प्रार्थना—पत्र प्रस्तुत करके निवेदन किया है कि उसका नाम बलराज महाल कोटला कलां लोअर की खेवट नं० 216, 468-70 ता 472, 474, ता 478, 483, 487, 488, 490, 492, 492 (673) 493, 494, 533, 761 में गलत चला आ रहा है जबकि उसका सही नाम राजेश कुमार है। इस बारे अपना आधार, राशन, स्कूल सर्टीफिकेट व शपथ—पत्र प्रस्तुत किया। अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि उक्त नाम की दरुस्ती बारे अगर किसी व्यक्ति को कोई उजर हो तो वह मुकद्दमा की पैरवी हेतु असालतन या वकालतन इस न्यायालय में दिनांक 04-05-2019 को प्रातः 10.00 बजे हाजिर न आने की सूरत में उनके खिलाफ एकतरफा कार्यवाही अमल में लाई जाकर नियमानुसार मुकद्दमा का निपटारा कर दिया जायेगा।

आज दिनांक 03-04-2019 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना, हि० प्र०।

ब अदालत श्री सुरेन्द्र कुमार अत्री, रजिस्ट्रेशन एवं मैरिज अधिकारी गगरेट स्थित कलोह,
जिला ऊना (हि0 प्र0)

निखिल वशिष्ट

बनाम

आम जनता

विषय.—शादी पंजीकरण प्रमाण-पत्र प्रदान करने बारे।

श्री निखिल वशिष्ट पुत्र श्री पवन वशिष्ट, निवासी गांव गगरेट, डाकघर गगरेट, सब-तहसील गगरेट स्थित कलोह, जिला ऊना (हि0 प्र0) ने एक प्रार्थना-पत्र प्रस्तुत किया, जिसमें उसने लिखा है कि उसकी शादी तेज स्वीता पुत्री श्री सुभाष भारद्वाज, निवासी गांव हाऊस नं0 1160, गली नं0 6, कृष्णा नगर, सिविल लाईन लुधियाना, जिला लुधियाना (पंजाब) के साथ दिनांक 27-4-2018 को हुई है का पंजीकरण किया जाकर उसे शादी पंजीकरण प्रमाण-पत्र दिया जाये।

अतः इस नोटिस के माध्यम से समस्त जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को शादी पंजीकरण बारे कोई एतराज/आपत्ति हो तो वह दिनांक 05-05-2019 को प्रातः 11.00 बजे असालतन या वकालतन हाजिर अदालत होकर पेश करें अन्यथा एकतरफा कार्यवाही अमल में लाई जाकर प्रार्थी को शादी पंजीकरण प्रमाण-पत्र जारी कर दिया जाएगा तथा बाद में कोई उजर काबिले समायत न होगा।

आज दिनांक 01-04-2019 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

सुरेन्द्र कुमार अत्री,
रजिस्ट्रेशन एवं मैरिज अधिकारी,
गगरेट स्थित कलोह, जिला ऊना (हि0 प्र0)।